87-313 ①

No.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

JEROME PAUL,
Petitioner

v.

STATE OF NORTH CAROLINA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

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August 21, 1987

188P12

QUESTIONS PRESENTED

1. Whether a judgment and sentence for contempt of court, based upon a criminal defense lawyer's alleged solicitation of a trial disruption by a spectator, were invalid under the First Amendment because of the trial judge's admission into evidence, expression of disapproval of, and explicit reliance upon certain out-of-court, publicized statements made by the lawyer about a pending case, which statements had no capacity to interfere with the fairness of the trial in any way?

2. Whether a judgment permanently disbarring a lawyer from the practice of law was invalid under the First Amendment where the trial judge, in explaining his reasons for choosing to impose bar discipline and for choosing the sanction of disbarment, expressly disapproved of, and explicity relied upon certain out-of-court, publicized statements made by the lawyer about a pending case, which statements had no capacity to interfere with the fairness of the trial in any way?

3. Whether judgments of contempt and disbarment which were based in part upon out-of-court, publicized statements made by a lawyer concerning a pending case, were invalid under the Due Process Clause of the Fourteenth Amendment where the lawyer was afforded no notice prior to the contempt and disbarment hearings that the statements were in issue in the case?

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No.

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OCTOBER TERM, 1987

JEROME PAUL,
Petitioner

v.

STATE OF NORTH CAROLINA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

The petitioner Jerome Paul respectfully prays that a writ of certiorari issue to review the judgment and opinion of the North Carolina Court of Appeals, entered in the above-entitled case on March 3, 1987.

OPINIONS BELOW

The opinion of the North Carolina Court of Appeals for which petitioner seeks review, In the Matter of: Jerome Paul, Attorney, No. 8610SC95, (N.C. Ct. App. Mar. 3, 1987), is reported at 353 S.E.2d 254 (N.C. App. 1987), and is reproduced in the Appendix hereto, p. 91a, *infra*.

The opinion of the North Carolina Court of Appeals in a related case, In the Matter of: Jerome Paul, Attorney, No. 8610SC230 (N.C. Ct. App. Nov. 25, 1986), has not been reported. It is reproduced in the Appendix hereto, p. 79a, *infra*.

JURISDICTION

On August 9, 1985, the trial judge found petitioner guilty of criminal contempt, sentenced him to thirty days in

jail and ordered him disbarred from the practice of law. The decision of the North Carolina Court of Appeals was issued on March 3, 1987, affirming the judgment, sentence and disbarment order of the trial judge.

Petitioner filed a Petition for Writ of Discretionary Review in the North Carolina Supreme Court on April 7, 1987. The petition was denied by order entered on June 5, 1987. On July 29, 1987, Chief Justice Rehnquist ordered that the time for filing this petition for writ of certiorari be extended to and including August 21, 1987.

The jurisdiction of this Court to review the judgment of the North Carolina Court of Appeals is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional provisions are involved in this case:

First Amendment: "Congress shall make no law ... abridging the freedom of speech or of the press."

Fourteenth Amendment: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law."

This case also involves N.C. Gen. Stat. §5A-11 (1981). The text of the pertinent portions of that statute has been fully set forth in the Appendix hereto, p. 1a-2a, infra.

STATEMENT OF THE CASE

Petitioner, an attorney, practiced for many years as a civil rights and criminal defense lawyer in the State of North Carolina. During that time he represented numerous controversial clients. (See, Trial transcript, Appendix, at 51a-52a). This petition arises out of his defense of one such defendant, a young black man accused of raping a white woman. The case, State v. Percy Robert Moorman, was tried in February 1985. It resulted in the conviction of the defendant and, ultimately, the conviction for contempt and disbarment of the petitioner.

Percy Moorman was a college football player. He was charged with raping a white co-ed. The case generated a considerable amount of media attention.

The "Gag Order"

Prior to trial, on October 19, 1984, after an ex parte application by the prosecutor, a Superior Court judge issued an order prohibiting the petitioner, only, "from commenting on the facts of these cases, the merits of these cases, the credibility of any witnesses, and any further inflammatory, prejudicial or potentially intimidating statements regarding this case."[1]

The Danville Meeting

Subsequently, on January 29, 1985, just prior to trial, petitioner appeared and made certain statements at a meeting in a church in Danville, Virginia, his

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[1] The "gag order" is set forth in the opinion of the North Carolina Court of Appeals in In the Matter of: Jerome Paul, Attorney, No. 8610SC230 (N.C. Ct. App. Nov. 25, 1986) (See, Appendix, at 83a).

client's hometown. The event is accurately described by the North Carolina Court of Appeals in a related case which directly concerned the petitioner's conduct at the meeting:

> The meeting was organized for local residents by several black ministers and representatives of the Southern Christian Leadership Conference to form a committee of support for Percy Moorman. Other plans included fundraising, identifying possible character witnesses for the defendant, arranging for bus transportation to the trial in Raleigh, North Carolina for local supporters, and organizing a major rally to take place in Danville shortly before the trial. The planning meeting was not generally open to the public, and each minister brought members of his congregation to the meeting.
>
> During the meeting, defendant made several statements, mostly in response to questions from some of the more than 200 people attending. Defendant did not know that Mark Moring, a reporter for the Danville Register, was seated

> in the back row of the church. The next day, some of defendant's comments appeared in an article written by Mark Moring in the Danville Register.

In the Matter Of: Jerome Paul, Attorney, No. 8610SC230 (N.C. Ct. App. Nov. 25, 1986) (Appendix, at 83a-85a).

The published comments mostly related to petitioner's view that the defendant was being framed up and that there was a racist motivation.[2/]

[2/] The article quoted petitioner as saying the following:

> Percy Moorman is facing a charge that has historically been used against black men to intimidate them, to keep the white power structure going and to maintain the system the way it is. As I became more involved with this case, I found out what the D.A.'s name was. Bill Hart. He is the guy they always use to frame people in situations like this. I had to ask, why were they so interested in framing this young man? I found out that North Carolina has never had a black starting quarterback, so they have already, in their minds, convicted Percy.

As a result of the article, the court, upon application of the prosecutor, issued an order to show cause why petitioner should not be held in contempt, both for alleged violation of

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> This particular D.A.'s office is being investigated by the Federal Government for cocaine use. While strolling through New York's Central Park one afternoon he saw all these Coke dealers and looked up and there was a D.A. from Raleigh. He was as red-faced as he could be.
>
> The question is: Are you going to let them do it? All my life I wanted to be a freedom fighter, the only way we can fight for freedom is to stand up to those in the system. Rather than live on my knees like a slave, I am going to stand up and fight like a man. I am going to stand next to Percy in that courtroom and we are going to be swinging. We are going to come out fighting.

See, In the Matter of Jerome Paul, Attorney, No. 8610SC230, (N.C. Ct. App. Nov. 25, 1986)(Appendix, at 85a-86a).

the "gag order" and of North Carolina attorney disciplinary rules DR 7-102(A)(8), 7-107(B)(5), and 7-107(B)(6).[3]

The Moormon Trial and Post-Trial Hearing

The Moorman trial took place in February 1985. On Monday of the second week of trial, one of the defendant's supporters, Angelo Barnes, a long-time acquaintance of petitioner, stood up in court and audibly objected to the way the trial judge was conducting the trial. He was immediately removed from the courtroom. The trial transcript in the case of State v. Percy Robert Moorman reflects the incident as follows:

> Q: All right. Did you say that she was throwing her hips at him, what does that mean?

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[3] Hereinafter this charge will sometimes be referred to as the "'gag order' contempt charge."

> MR. HART: Objection.
>
> COURT: Sustained to the form of the question.
>
> Q: What do you mean when you say 'she was throwing her hips at him'?
>
> MR. HART: Objection.
>
> COURT: Sustained.
>
> Q: Can you tell me what the meaning of that terminology is?
>
> MR. HART: Objection.
>
> COURT: Sustained.
>
> SPECTATOR: Judge please give this man a chance to represent his client. You acting like a D.A. --
>
> COURT: Take him to the fifth floor. You may proceed. You may proceed.

Barnes was found in contempt of court and sentenced to thirty days in jail.

Moorman was convicted. After conviction he retained new counsel and filed a motion for a new trial, alleging ineffective assistance of counsel.

During the course of a hearing on that motion in July 1985 Moorman testified that on the morning of the incident, petitioner and Barnes had discussed a "protest" in the car on the way to court and that petitioner told Barnes to "pick an appropriate time to protest." (See, In the Matter of: Jerome Paul, Attorney, 353 S.E.2d 254, 255 (N.C. App. 1987) (Appendix, at 93a). This testimony led to a second order to show cause, issued on July 24, 1985. (The Order to Show Cause is reproduced in the Appendix, at 3a).[4/]

The Trial Contempt Case

The trial contempt charge came to trial first, on August 8, 1985, before the judge who heard the motion for a new

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[4/] Hereinafter this charge will sometimes be referred to as the "trial contempt charge."

trial. (See Judgment of Contempt, reproduced in the Appendix, at 68a).

The show cause order in this case made no reference at all to the Danville meeting. At the outset the petitioner objected that the notice did "not adequately specify the acts committed", See Motion to Dismiss (Appendix, at 9a-12a), but his objection was overruled. (Trial transcript, Appendix, at 15a-17a).

The state's theory at trial was that the disruption had actually been planned in advance by petitioner and one Golden Frinks, an activist with the Southern Christian Leadership Conference, in order to attract media attention to defense allegations of unfairness and racial prejudice. The only direct evidence offered of Attorney Paul's complicity was the testimony of his former client, Percy

Moorman. In the Matter of: Jerome Paul, Attorney, 353 S.E.2d 254, 255-257 (N.C. App. 1987)(Appendix, at 91a-98a).[5]

Petitioner admitted that he knew that Barnes planned some kind of protest but testified that he tried to discourage him from doing it. Id., at 255-256 (Appendix, at 93a). According to petitioner, he felt that Barnes' proposed

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[5] The Court of Appeals cited as corrobative evidence certain other testimony, none of which, however, directly implicated petitioner. Dorothy Moorman, Percy Moorman's mother, testified that Golden Frinks knew before the incident that it was going to happen and that he later asked her for $10 to give to Barnes "because he helped us out." Thomas Adams testified that, while in jail serving his sentence, Barnes said that he had discussed what he was going to do with petitioner before he did it. George Rogister, Moorman's new attorney, testified that Dorothy Moorman told him when he interviewed her that petitioner and Golden Frinks had planned it. In the Matter of: Jerome Paul, Attorney, 353 S.E.2d 254, 257 (N.C. App. 1987) (Appendix, at 98a-100a).

outburst would be harmful and without purpose (Trial transcript, Appendix, at 27a-28a). Angelo Barnes also testified. He said that what he did was completely on his own.

During the direct testimony of Percy Moorman, the court, over objection, admitted evidence about the Danville meeting and, in particular, evidence of statements made by petitioner at the meeting. (Trial transcript, Appendix, at 19a-22a, 25a).[6]

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[6] When the judge doubted the relevance of the evidence, the prosecutor explained his theory, as follows:

> Mr. Paul is charged in this particular show cause hearing of violating appropriate rules of conduct in a court proceeding by the events which are alleged in the show cause order. What I am soliciting from testimony is whether or not he knowingly did so in the same case in a similar situation which I think would

At the close of all the evidence, the Court found petitioner guilty. On the written judgment the Court found:

> beyond a reasonable doubt that Attorney Jerome Paul did solicit, encourage and cause Angelo Barnes to stand up in open Court during the trial of State v. Percy Moorman on 18 February 1985 in the Superior Court of Wake County for the purpose of interrupting the trial and protesting the

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> tend to show that it was a pattern of the way Mr. Paul conducted the case. I think it would bear on whether or not he might have done so in this particular matter in February as to whether or not he did, also, in January, The question, obviously to some degree I suppose, is the question of intent on Mr. Paul's part on what he would do. He certainly appeared to violate an order of some superior court judge at a hearing or rally. I think that would bear on the question of whether or not he would encourage someone to act as they did at the trial.

(Trial transcript, Appendix, at 23a-24a).

> rulings of the presiding Judge. Attorney Paul acted intentionally, knowing that this conduct of Angelo Barnes would constitute willful behavior tending to disrupt and interrupt the Court proceedings constituting criminal contempt in violation of G.S. 5A-11(1). The Court finds that, as a result of the aforesaid solicitation and encouragement from Attorney Paul, Angelo Barnes did in fact stand up in open court to protest and object to the trial Court's rulings and that this conduct did in fact disrupt and interrupt the trial proceeding.

(Trial transcript, Appendix, at 47a-48a).

The judge stated his reasoning, in open court, explaining how he relied upon the petitioner's comments at the Danville meeting:

> The Court was impressed by Mr. Paul's testimony from which one could infer that he believes that in some circumstances, a demonstration, or act of protest, is philosophically appropriate. I considered that along with all the other evidence in this case.

> I have carefully considered the circumstances to which he testified regarding his conduct in the *Joanne Little* trial for which Judge Hamilton Hobgood held him in contempt.
>
> I have considered, among other things, Mr. Paul's statements from which the Court could infer that in his opinion, the *Percy Moorman* case was not the kind of case or circumstance that warranted a public protest or demonstration; that in essence it was not a good tactical decision; it was stupid, served no purpose; and that he did not solicit, encourage or sanction it and discouraged it.
>
> *However, in evaluating that statement, the Court has also considered all the other evidence in this record in the hearing before me regarding the conduct of Mr. Paul in the Moorman case that appears unwise, inappropriate and poor tactical decisions including his public statements to members of the media which could be viewed as protest against prejudice.*

(emphasis added)(Trial transcript, Appendix, at 42a-44a).

The court then sentenced the defendant to 30 days. (Trial transcript, Appendix, at 54a).

Immediately the court commenced a hearing on whether to exercise the court's inherent authority under North Carolina law, see In the Matter of: Jerome Paul, Attorney, 353 S.E.2d at 259-260 (Appendix, at 111a-112a), to impose a disciplinary sanction upon Mr. Paul as an attorney. (Trial transcript, Appendix at 56a). At the close of the hearing, the court ordered petitioner disbarred. Again, the judge explained how he had relied on petitioner's statements at the Danville meeting:

> It is the feeling of the Court that, obviously, our system of justice is an extremely vulnerable and fragile thing. It can work and be effective only if the citizens of the community have some trust and respect for it. For that reason, what we do in any trial is

important. But, also, equally important is how our actions and conduct are perceived.

For that reason statements such as "the system is racially prejudiced against" someone, unsupported by the evidence; or that a respected prosecutor has been brought in to frame someone unsupported by the evidence; or that a planned courtroom demonstration is, in fact, planned and is carried out, totally manipulates that very fragile system to the extent that the community does not know what to believe.

It is the observation of the court that the Community, then, loses trust and loses respect. And just as in a marriage, when you lose that trust it is gone. And it does not easily return.

An attorney is an officer of the court. When he, as an attorney, engages in conduct that intentionally disrupts the proceedings, he contributes to that loss of trust and respect for law and for the court and for our system of justice. The court considers that type of misconduct extremely serious. When that attorney does it

> repeatedly, the court considers that outrageous.
>
> One also notes that an attorney who believes that his personal goals or principles sometimes justify violating the rules that govern his professional conduct, travels somewhat in harms way as it relates to his professional license to practice law.

(emphasis added) (Trial transcript, Appendix, at 59a-61a).

The Gag Order Contempt Case

The gag order contempt charge came on for hearing in September 1985, before the judge who had originally issued it. After hearing, the court found that petitioner had violated the order, adjudged him in contempt of court and sentenced him to thirty days in jail. Then the court commenced a disciplinary hearing and, after finding that the petitioner had violated Disciplinary Rules 7-102(A)(8), 7-107(B)(5), and 7-

107(B)(6) of the North Carolina Code of Professional Responsibility, the court ordered him disbarred, upon the basis of the contempt and disciplinary findings.

Appellate Proceedings

Petitioner duly appealed the judgments in both cases to the North Carolina Court of Appeals.

The judgments in the gag order case were reversed on November 25, 1986, because, *inter alia*, the court concluded that there was no basis for the conclusion of the trial court that petitioner's statements were of such a nature that there was a reasonable likelihood of interference with a fair jury proceeding. *In the Matter of: Jerome Paul, Attorney*, No. 8610SC230 (N.C. Ct. App. Nov. 25, 1986) (Appendix, at 89a-90a):

Significantly, the trial judge did not find that defendant's comments presented a clear and present danger or a serious and imminent threat. Defendant's comments were made in another state and were not reported in, nor broadcast by, any North Carolina news media. The statements were made at a church meeting called to organize lawful activities in support of Mr. Moorman's legal defense. Defendant's remarks contained no details about the case; they related no specifics about the evidence or about the witnesses. There is no evidence that the statements were made with any foreseeable effect on trial jurors, or, to use defendant's words, "poison[ed] the trial jury well." Nor is there any evidence that the customary methods for conducting voir dire would not assure the impartiality of jurors even assuming they knew of defendant's remarks.

Statements directed only to a defendant's supporters that the defendant has been unjustly accused do not create a clear and present danger or a serious and imminent threat to the administration of justice. See Bridges v. California, 314 U.S. 252, 86 L.Ed. 192

> (1941)(clear and present danger of substantive evil must be extremely serious to impair freedom of speech). As Mr. Moorman's advocate at a fund-raising meeting, defendant obviously was not an uninterested commentator. Given the nature of the meeting in Danville, Virginia on 29 January 1985, defendant's strong statements, suggesting that his client was framed, seem hardly designed to intimidate or to sway potential jurors one was or the other.
>
> No one questions the American Bar Association's Model Rule of Professional Conduct, Rule 3.6(c), which provides that a lawyer "may state without elaboration . . . the general nature of the claim or defense. . . ." Nor would anyone question the right of an attorney to file, even in the county in which the case is to be tried, a motion to dismiss the prosecution based on prosecutorial misconduct when there is a good faith basis to believe that the attorney's client has been framed. The record on appeal contains what defendant calls his "good faith" basis for his comments.

Id. (Appendix, at 87a-89a).

The trial contempt appeal was decided on March 3, 1987. In that appeal petitioner argued that the judgments of contempt and disbarment were fatally infected by the admission of evidence of and reliance by the judge upon the Danville statements. First, petitioner argued that admission of the evidence penalized him for exercising his First Amendment rights. Second, even if the evidence was properly admitted, petitioner argued that the judge violated the First Amendment by explicitly relying on protected conduct in order to resolve the factual issues in the contempt case. Finally, petitioner argued that the judge penalized him for the exercise of his First Amendment rights when he relied on the Danville statements in selecting disbarment as the bar discipline to be

imposed.

The Court of Appeals rejected all of these contentions and affirmed the judgments. First, it held that the evidence was properly admitted "to show [petitioner's] motive and intent to make the public aware of his belief that the prosecution of Moorman was racially motivated, even if to do so would violate a court order." In the Matter of: Jerome Paul, Attorney, 353 S.E.2d 254, 258 (N.C. App. 1987)(Appendix, at 105a-106a). The court acknowledged that the trial judge stated, in explaining his decision, "that he had considered the evidence concerning the Danville statements for the purpose of weighing the credibility of [petitioner's] assertions that he had not solicited Barnes' outburst because he . . . felt

that the case did not warrant a public protest or demonstration." (Trial transcript, Appendix, at 107a-108a). However, the Court of Appeals noted that the judgment of contempt was based upon the subsidiary finding that [petitioner] "'did solicit, encourage and cause' Angelo Barnes to disrupt the Moorman trial." "Thus," the court concluded, "it appears that the trial judge properly considered the evidence of respondent's statements in Danville as relevant only to the issue of motive or intent and did not base his finding of contempt on this evidence in violation of . . . [petitioner's] constitutional rights." In the Matter of: Jerome Paul, Attorney, 353 S.E.2d at 259 (Appendix, at 108a). Finally, the court held that petitioner "was not disbarred for making public

statements in Danville, as he contends." Id. at 260 (Appendix, at 114a).

"Although the trial judge indicated that he disapproved of respondent's conduct in Danville, he did not make any findings of fact in the judgment of disbarment relating to this conduct. All of the findings of fact relate to the judgment of contempt for [petitioner's] solicitation of Angelo Barnes to disrupt Moorman's trial." Id. at 260 (Appendix, at 114a).

Thereafter, petitioner filed a Petition for a Writ of Discretionary Review in the North Carolina Supreme Court. The petition was denied by order entered on June 5, 1987. Thereafter, this Court (by Rehnquist, C.J.) extended the time to file this petition for certiorari until August 21, 1987.

REASONS FOR GRANTING THE WRIT

I.

The case raises an important question concerning public access to and media coverage of court proceedings -- to wit, the extent to which the First Amendment protects an attorney in making critical statements about the prosecution of his client in a pending criminal case -- which ought to be resolved by this Court.

The underlying issue in this case is the extent to which the First Amendment protects an attorney in making critical public statements about the prosecution of his client in a pending criminal case, in circumstances in which the prospects of a fair trial are in no way jeopardized. This Court has never squarely decided this question.

The Court has decided an extensive series of cases concerning the constitutional mandates for or limitations upon public access to and

media coverage of court proceedings.[7]

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[7] See, Cox Broadcasting Corp. v. Cohen, 420 U.S. 469, 496 (1975)(barring sanctions for revelation of rape victim's name obtained from public records); Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976)(invalidating order restraining non-parties from publishing public information about case); Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1976)(invalidating injunction against revelation of name of juvenile accused where information in "public domain"); Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979)(invalidating statute prohibiting publication of juvenile's name, where lawfully obtained); Gannett Co., Inc. v. DePasquale, 443 U.S. 368 (1979) (no Sixth Amendment right of the press to attend pre-trial proceedings); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980)(First Amendment right of press to attend criminal trial); Chandler v. Florida, 449 U.S. 560 (1981)(no absolute right of defendant to exclude electronic media from trial); Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982)(First Amendment right of press and public to attend criminal trial during testimony of child victim in sexual offense criminal case); Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984)(right of press to attend pre-trial voir dire examination of jurors); Waller v. Georgia, 467 U.S. 30 (1984)(defendant's Sixth Amendment right to public access to pre-trial suppression hearing); Press-Enterprise

And the Court has invalidated use of the contempt power to punish public comment about pending litigation, at least in cases not involving attorneys for parties and where no pending jury trial was involved, in the absence of a clear and present danger or a serious and imminent threat to the administration of justice.[8/]

The Court has also carefully developed the law concerning the First Amendment rights of lawyers in respect to advertising or soliciting for cases in both the commercial and non-commercial

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Co. v. Superior Court, 106 S.Ct. 2735 (1986)(First Amendment right of press to attend preliminary hearing).

[8/] See, Bridges v. California, 314 U.S. 252 (1941); Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Haney, 331 U.S. 367 (1947); Wood v. Georgia, 370 U.S. 331 (1946).

contexts.[9]

The Court has decided, on non-constitutional grounds, several cases involving lawyers' speech. In In re Sawyer, 360 U.S. 622 (1959) a lawyer made out-of-court, public criticisms of a pending prosecution during the course of the trial in which she was counsel for a defendant. The Court reversed the attorney's suspension, holding that her statements did not constitute misconduct in the absence of any showing of a tendency to obstruct justice. More recently, in In re Snyder, 472 U.S. 634 (1985), the Court held that the

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[9] See NAACP v. Button, 371 U.S. 415 (1963); Bates v. State Bar of Arizona, 433 U.S. 350 (1977); In re Primus, 436 U.S. 412 (1978); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978); In re R.M.J., 455 U.S. 191 (1982); Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985).

disciplinary power of a federal court could not be utilized to suspend an attorney for a single incident of rudeness in sending a "harsh" and "ill-mannered" letter to a court.

The Court, however, has not decided any case which has squarely presented the question of to what extent the First Amendment limits the government in prohibiting a lawyer from making public comments in a case in which he is associated as trial counsel. In Sheppard v. Maxwell, 384 U.S. 333, 360-361 (1966) the Court suggested, in dictum, that there is greater power to proscribe comments by attorneys and parties than other persons. However, the Court has never defined the limits of this power because it has carefully avoided deciding the issue in cases involving the First

Amendment rights of the press or the public. See Nebraska Press Ass'n v. Stuart, 427 U.S., at 564; Id. at 601 n. 27 (Brennan, J., concurring); Landmark Communications v. Virginia, 435 U.S. 829, 837 (1978).

In the absence of guidance from this Court, the lower federal courts have applied a diverging set of constitutional standards to the regulation of attorney speech related to pending litigation. Compare Chase v. Robson, 435 F.2d 1059, 1061 (7th Cir. 1970) ("clear and present danger" test); Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (7th Cir. 1975) cert. denied. 427 U.S. 912 (1975)(same); and Levine v. United States District Court, 764 F.2d 590, 595 (9th Cir. 1985)("clear and present danger or a

serious and imminent threat to a protected competing interest") with In re Halkin, 598 F.2d 176, 191 (D.C.Cir. 1979)("harm posed . . . must be substantial and serious") with In re Russell, 726 F.2d 1007, 1010 (4th Cir. 1984)("reasonable likelihood of prejudice" test); Hirschkop v. Snead, 594 F.2d 356 (4th Cir. 1979)(same); United States v. Tijerina, 412 F.2d 661, 666 (10th Cir. 1969)(same). See also, In re Hinds, 90 N.J. 604, 449 A.2d 483 (1982) ("reasonable likelihood" test: "requir[ing] a showing by clear and convincing evidence that an attorney's extrajudicial speech truly jeopardized trial fairness . . . ." 449 A.2d at 495) after remand of Middlesex Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982). And there have been similarly

differing approaches by bar regulators. Compare ABA Model Code of Professional Responsibility DR 7-107 (1969)(no explicit reference to likelihood of harm) with ABA Standards Relating to the Administration of Criminal Justice, Fair Trial and Free Press (Approved Draft 1978)(proposing addition of "clear and present danger" test to rule) with ABA Model Rules of Professional Conduct, Rule 3.6 (1983)("substantial likelihood of materially prejudicing an adjudicative proceeding.") Consequently, there is a great deal of uncertainty among practicing attorneys as to what public comment is permitted, or what, indeed, may sometimes be required by the ethical, zealous advocate. See, Stern, The Right of the Accused to a Public Defense, 18 Harv. Civ. Rts - Civ. Lib. L. Rev. 53,

65-68 (1983).

This Court should grant certiorari to hold that the statements made by the petitioner in Danville, Virginia were protected by the First Amendment. An accused and his lawyer have legitimate and compelling interests in having the right to speak.[10/] A number of these are illustrated in this case. The statements here were made at a meeting to organize support for the client's defense. The meeting involved plans for fundraising, identifying character witnesses and arranging for bus transportation of supporters for the trial. The meeting

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[10/] See, Freedman and Starwood, "Prior Restraints on Freedom of Expression by Defendants and Defense Attorneys: Ratio Decidendi v. Obiter Dictum, 29 Stan. L. Rev. 607 (1977); Hirst, Silence Orders -- Preserving Political Expression by Defendants and Their Lawyers, 6 Harv. Civ. Rts. - Civ. Lib. L. Rev. 595, 606-08 (1976).

was not generally open to the public and, indeed, was held in another state. The Court of Appeals was therefore correct that the circumstances did not even create a reasonable likelihood of interference with the administration of justice.

Petitioner's participation in the meeting was not only an exercise of his own right to free speech, but it was in furtherance of his client's, the client's supporters', as well as his own freedom to associate for the purpose of securing legal redress. This right can be abridged only when necessitated by the most compelling state interest. _See_, _NAACP v. Button_, 371 U.S. 415, 439 (1963); _NAACP v. State of Ala., ex rel Patterson_, 357 U.S. 449 (1958); _Brotherhood of R.R. Trainmen v. Virginia_

ex rel Va. State Bar, 377 U.S. 1 (1964); Thomas v. Collins, 323 U.S. 516, 530 (1945). It is doubtful that a state could ever have an interest so weighty that a lawyer could be constitutionally punished for making a statement -- directed only to a defendant's supporters -- that the client had been unjustly accused. Clearly, here, where the statements were made in the client's hometown church in another state, with no foreseeable effect on any trial jurors, petitioner Paul's comments enjoyed the absolute protection of the First Amendment.

II.

The decision below, if not reversed, presents a grave threat to the ability of lawyers to provide zealous advocacy to their clients since the petitioner was clearly punished for the exercise of First Amendment rights in defense of his client.

The Court of Appeals recognized that petitioner could not be validly punished for making the statements in Danville, and it therefore reversed the judgments of contempt and disbarment which were expressly based upon that conduct. However, it affirmed the judgments in the trial disruption case because no specific reference is found to the Danville affair in the judge's written findings, even though the judge demonstrated his reliance on the event orally, in open court. The Court of Appeals' method of resolving the case, however, does not in any way lessen the importance of the

issues presented by it here. On the contrary, not only is the record unambiguously clear that petitioner was punished because he made the statements, petitioner contends that it was a denial of Due Process of Law, in and of itself, to fail to provide advance notice to him that the public statements were to be in issue in this proceeding. It would be ironic indeed if the unconstitutional failure to make his conduct in Danville an explicit part of the written notice -- and the consequent failure to incorporate it as part of the written findings -- would now become the basis for insulating the issues presented by this case from judicial review. In any event, even apart from the question of Due Process of Law, if the disbarment of an attorney on account of a speech made for a client at

a fundraising meeting can be shielded from review by means of the simple expedient of omitting express reference to it in formal written documents, then a vengeful or arbitrary trial judge could punish lawyers for zealous representation, or even for their beliefs, with complete impunity. Tempers do flare in hotly contested trials; and this Court has recognized that the power of contempt is potentially subject to abuse. _See_, _Taylor v. Hayes_, 418 U.S. 488, 500 (1974); _Bloom v. Illinois_, 391 U.S. 199, 202 (1968). If effective advocacy by defense lawyers is to be encouraged and safeguarded, then the Court must ensure that a lawyer is not left without remedy in a case where the record clearly demonstrates that the lawyer has been disbarred for

unconstitutional reasons.

There can be little doubt that petitioner was penalized for his exercise of First Amendment rights in this case. While it is true, as the Court of Appeals noted, that the trial judge based the contempt conviction upon the finding that petitioner "'did solicit, encourage and cause' Angelo Barnes to disrupt the Moorman trial," the record is very clear that petitioner's conduct at the Danville meeting was used by the trial judge to infer complicity in the trial disruption. The judge was very open about his reasoning process. The petitioner had testified that he thought that Barnes' proposed protest was a bad idea and that he so counselled Barnes. But the judge rejected that testimony precisely because, in the judge's view, petitioner

had already exhibited poor judgment by making the publicized statements:

> However, in evaluating that statement, the Court has also considered all the other evidence in this record in the hearing before me regarding the conduct of Mr. Paul in the Moorman case that appears unwise, inappropriate and poor tactical decisions including his public statements to the media which could be viewed as protest against prejudice.

(emphasis added) (Trial transcript, Appendix, at 43a-44a).

However, as this speech was absolutely protected, there was nothing improper or inappropriate about it.[11]

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[11] There could be no argument that petitioner could have been punished for violating the gag order without having sought appellate review. Compare Walker v. Birmingham, 388 U.S. 307 (1967). There are two reasons for this. First, under North Carolina law there is no applicable collateral bar to the assertion in defense of the protected nature of conduct when the contempt prosecution is "on the basis of the content of any broadcast, publication, or

---

other communication" and the communication does not present a "clear and present danger of an imminent threat." N.C. Gen. Stat. §5A-11(b) (1981) provides as follows:

> No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication, unless it presents a clear and present danger of an imminent threat to the administration of criminal justice.

The Court of Appeals applied this statute to invalidate the gag order contempt conviction of petitioner (N.C. Gen. Stat. §5A-11 is set forth, in pertinent part, in the Appendix, at 1a-2a).

Secondly, the gag order was issued *ex parte* and petitioner testified that he was never served with a copy of it. In the gag order contempt case the Court of Appeals held that "the trial court's conclusion that defendant was properly served with a copy of the "gag order" seems unsupported by the evidence . . ." (*In the Matter of: Jerome Paul, Attorney*, No. 8610SC230, (N.C. Ct. App. Nov. 25, 1986) (Appendix, at 82a). Plainly, a person may not be foreclosed from asserting the constitutionally-protected nature of his conduct on the ground that he did not seek appellate

Moreover, the statements were admitted into evidence for more than proof of petitioner's desire for publicity. They were admitted -- and explicitly relied upon -- to prove that a person who would violate a court order to garner publicity, would also disrupt a trial for the same reason. The prosecutor offered the statements for the "pattern of the way Mr. Paul conducted the case." "He certainly appeared to violate an order of some superior court judge at a hearing or rally. I think that would bear on the question of whether or not he would encourage someone to act as they did at the trial." (Trial transcript, Appendix, at 23a-24a). This was exactly the reasoning the judge employed in finding

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review of an unconstitutional order when the order was never served upon him.

petitioner guilty. But there is all the difference in the world between the exercise of a constitutionally protected right to speech and the disruption of a court proceeding. The latter in no way follows from the former, and to use the former to support an inference of the latter clearly penalized the defendant for exercising his First Amendment rights.

This Court has often held that penalties and burdens which hinder the exercise of First Amendment rights are invalid unless justified by an overriding governmental interest. Speiser v. Randall, 357 U.S. 513, 518-19 (1958); Minneapolis Star and Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983); Federal Election Commission v. Massachusetts Citizens for Life, Inc.,

107 S.Ct. 616 (1986). In Griffin v. California, 380 U.S. 616 (1965) this Court held that an inference of guilt made from the defendant's assertion of his Fifth Amendment right against self-incrimination was an unconstitutional penalty. The inference made against petitioner here is of a similar character and was equally impermissible.

The judgment of disbarment was just as plainly premised upon petitioner's exercise of First Amendment rights. Under North Carolina law, as a result of the conviction for contempt, the judge was entitled but not obliged to impose a disciplinary sanction. And, if a sanction was imposed, the judge could have chosen either to suspend or to disbar. "Judicial disciplinary action may take the form of an order of

disbarment or suspension of the attorney's privilege to practice law." In the Matter of Jerome Paul, Attorney, 353 S.E.2d, at 259 (Appendix, at 111a). Thus the court was not obliged to choose disbarment. The ultimate question was whether the attorney had been shown to be "unfit" or "unworthy" to practice law, State v. Spivey, 213 N.C. 45, 47 (1938); In the Matter of Jerome Paul, Attorney, 353 S.E.2d, at 260 (Appendix, at 112a). See, Schware v. Board of Bar Examiners, 353 U.S. 232, 238-9 (1957)(constitutional standard respecting admission: "[A]ny qualification must have a rational connection with the applicant's fitness or capacity to practice law.").

In explaining from the bench why he chose to discipline the petitioner -- and, in particular, why he chose to

disbar -- the judge made it very plain that petitioner's public statements were the determinative factor:

> It is the feeling of the Court that, obviously, our system of justice is an extremely vulnerable and fragile thing. It can work and be effective only if the citizens of the community have some trust and respect for it. For that reason, what we do in any trial is important. But, also, equally important is how our actions and conduct are perceived.
>
> For that reason statements such as "the system is racially prejudiced against" someone, unsupported by the evidence; or that a respected prosecutor has been brought in to frame someone unsupported by the evidence; or that a planned courtroom demonstration is, in fact, planned and is carried out, totally manipulates that very fragile system to the extent that the community does not know what to believe.

(Trial transcript, Appendix, at 59a-60a).

Two striking features of the judge's explanation stand out. First, at the outset of the statement the judge mentioned three things that petitioner was supposed to have done and which the court condemned. Two of them -- the first two mentioned -- were statements made at the Danville meeting. Second, the principal fault that the court found with petitioner's conduct was with the message that he conveyed: that by his actions he jeopardized the trust that citizens have for the system of justice "to the extent that the community does not know what to believe." In short, the decisive factor in petitioner's permanent disbarment from the practice of law was the content of what he said in Danville.

Clearly, an attorney's right to practice law may not be denied because he

has chosen to exercise his rights under the First Amendment. Baird v. State Bar of Arizona, 401 U.S. 1 (1971); In re Stolar, 401 U.S. 23 (1971). See, Spevack v. Klein, 385 U.S. 511 (1967)(reversing disbarment for exercise of Fifth Amendment right). Since a state may not discharge a public employee for exercising a protected right in freedom of speech, Rankin v. McPherson, 107 S.Ct. 2891 (1987); Perry v. Sinderman, 408 U.S. 593, 597 (1972), it obviously may not, for like reasons, permanently deny a person the right to practice his profession.

Petitioner has plainly been penalized for his speech. Even if it were true that the judge could have disbarred petitioner for the misdemeanor conviction alone, the fact is that he did

not. Instead, the judge explicitly relied upon the petitioner's speech in making the choice he did. The judgment is therefore unconstitutional. See, United States v. Tucker, 404 U.S. 443 (1972) (judge "gave explicit attention to "unconstitutionally obtained convictions in imposing sentence).[12]

Furthermore, the Court's finding that the statements were "unsupported by evidence" does not strip them of constitutional protection. On the contrary, by penalizing the petitioner for what he said, the court compounded the offense to the First Amendment.

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[12] The fact, relied upon by the Court of Appeals, that the trial judge did not make any written findings of fact about the Danville meeting, is without significance. He very clearly explained his reasoning -- and his reliance upon petitioner's protected conduct -- in open court.

These were statements of opinion with are not susceptible of precise proof and which therefore enjoy complete protection under the First Amendment. But even if it were permissible to impose discipline upon the falsity of the statements, the burden was on the State to prove that they were false, not on petitioner to prove that they were true. And even if they were false, the State would still have had to show that the statements were made with knowledge that they were false or with reckless disregard to whether they were false or not. New York Times v. Sullivan, 376 U.S. 254, 279-80 (1964); Garrison v. Louisiana, 379 U.S. 64 (1964).

Finally, the judge's reliance upon the statements was invalid because petitioner was never given any notice

that his conduct in speaking to the meeting in Danville was to be in issue in either the contempt or disciplinary proceedings. Indeed, petitioner had every reason to believe that this conduct would not be a part of the case, since it was the subject of a separate proceeding.

An attorney in a contempt charge arising out of a trial is entitled to specific notice of what he is charged with. "[B]efore an attorney is finally adjudicated in contempt and sentenced after trial for conduct during trial, he should have reasonable notice of the specific charges and an opportunity to be heard in his own behalf." Taylor v. Hayes, 418 U.S. 488, 498-99 (1974). Similarly, an attorney in a bar disciplinary proceeding is entitled to procedural due process of law. In re

Ruffalo, 390 U.S. 544 (1968). In particular, he is entitled to notice of the grounds to be relied upon for disbarment, at a point in time sufficiently in advance to permit him to introduce evidence in his favor on the issue. Id. The omission was particularly prejudicial in respect to the disbarment. At no time was the petitioner here made aware that he was required to produce evidence to support the truth of what he had said in Danville. Here, just as in Ruffalo, the precise nature of the misconduct charged did not emerge until the final decision of the disciplinary authority, when it was too late to defend. In this case, petitioner had no way of knowing that the content of his statements were being held against him until the very end, when the

judge explained why he was being disbarred. It is significant, in this connection, to note that in the gag order case, where the conduct was formally in issue, the Court of Appeals noted that "[t]he record on appeal contains what defendant calls his 'good faith' basis for his comments." In the Matter of Jerome Paul, Attorney, No. 8610SC230 (N.C. Ct. App. Nov. 25, 1986) (Appendix, at 89a). The petitioner was thus clearly prejudiced in his defense.

CONCLUSION

Based on the foregoing, the writ of certiorari should issue to review the decision of the North Carolina Court of Appeals.

Respectfully submitted,

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On the Petition:
Anne Zinkin
Law Clerk

August 21, 1987

APPENDIX

North Carolina General Statutues

§ 5A-11. Criminal contempt.

(a) Except as provided in subsection (b), each of the following is criminal contempt:

(1) Willfull behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

. . .

(3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

. . .

(5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

. . .

The grounds for criminal contempt specified here are exclusive, regardless of any other grounds for criminal contempt which existed at common law.

(b) No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication unless it presents a clear and present danger of an imminent and serious threat to the administration of criminal justice.

. . .

NORTH CAROLINA IN THE GENERAL COURT
OF JUSTICE
WAKE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)
)
PLAINTIFF) NO.
v.)
) 85-CRS-49342
JEROME PAUL,)
DEFENDANT)

ORDER TO SHOW CAUSE

This matter came to the attention of the undersigned judge presiding over a Special Criminal Session of the Superior Court of Wake County commencing on July 22, 1985, wherein evidence was presented in support of motions for a new trial in State v. Percy Robert Moorman (84-CRS-061127, 061128 and 066019) for alleged ineffective assistance of the original trial defense attorney, Jerome Paul.

During the course of the aforesaid

hearing the Court heard evidence under oath from Judge James H. Pou Bailey that during the course of the MOORMAN trial that he held Angelo Avant Barnes in direct contempt of court and sentenced him to thirty days in jail for making loud statements in protest to the Court's rulings in open court which were intended to disrupt the trial proceedings.

In addition, the Court has considered as evidence a portion of the trial transcript of the MOORMAN trial regarding this incident which reflects the following:

> "Q. All right. So he indicated that she engaged ---
>
> COURT: Mr. Paul, you are testifying. Ask him the questions.
>
> Q. All right. When you say that she was throwing her hips at him, what does that mean?
>
> MR. HART: Objection.
>
> COURT: Sustained.

Q. Can you tell me what the meaning of that terminology is?

MR. HART: Objection.

COURT: Sustained.

Q. SPECTATOR: Judge, please give this man a chance to represent his client. You acting like the D.A. --

COURT: Take him to the fifth floor. You may proceed. You may proceed."

In addition, the Court has heard and carefully considered the sworn testimony of Percy Robert Moorman wherein he stated that on the morning of the day on which this incident occurred, he rode to court with Attorney Paul, Angelo Barnes and another man. During this trip he heard a conversation between Attorney Paul and Barnes wherein Barnes was advised by Paul that there was a need to protest the unfairness and prejudice of the trial against Attorney Paul and Moorman and that Paul wanted Barnes to stand up during the trial and protest the Court's

rulings so that the news media would publicize this protest and focus on the prejudice. Barnes agreed and was advised by Paul that he would probably be put in jail for contempt by Judge Bailey. According to this testimony, Paul instructed Barnes to pick a time when Judge Bailey had sustained objections by Prosecutor Hart to questions asked by Paul of a witness.

Based upon all of the above described evidence, after carefully considering the demeanor and credibility of the witness and examining the witness personally, the Court finds that there is probable cause to believe that Attorney Jerome Paul solicited Angelo Barnes to engage in an intentional act of protest in open court as described above for the purpose of disrupting the trial proceedings and that by doing so Attorney

Jerome Paul is himself guilty of contempt of court.

WHEREFORE, based upon the information set forth above and for the reasons set forth above, and pursuant to the authority and procedures of G.S. Chapter 5A, the Court orders that Attorney Jerome Paul appear before this Court on the 8th day of August, 1985, to show cause why he should not be held in contempt.

WHEREFORE, based upon the information set forth above and for the reasons set forth above the Court further orders that Jerome Paul appear before this Court on the 8th day of August, 1985, to show cause why he should not be disciplined by the Court for misconduct as an attorney as described above. The Court entered this order pursuant to the inherent power of the Court to discipline

lawyers for improper conduct. [IN RE BURTON, 257 NC 534 (1962); IN RE PALMER, 32 NC App 499, rev'd on other grounds, 296 NC 638 (1979)],

IT IS SO ORDERED on this 24th day of July, 1985.

s/ DONALD W. STEPHENS
Judge Presiding

NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)
)
PLAINTIFF) NO.
V.)
) 85-CRS-49342
JEROME PAUL,)
DEFENDANT)

MOTION TO DISMISS
(Filed in open court 8/8/85)

The defendant in the above-referenced matter moves pursuant to N.C.G.S. 15A-954 to dismiss the charges in the above-referenced matter in that the Order to Show Cause by His Honor, Donald W. Stephens, dated July 7, 1984, does not meet the statutory and constitutional safeguards available for him in that:

1. The Court is without jurisdiction over the matter and over the defendant and is without the power to

punish a lawyer without meeting the statutory and constitutional safeguards applicable for such a hearing.

2. The defendant has not been specifically charged with the conduct alleged to have been committed in that the above-referenced order does not adequately specify the acts committed.

3. The defendant is not given notice as to what specific standard of conduct he has violated and to what standard of conduct for which he is held responsible.

4. The defendant is unable to ascertain what burden of proof, to which burden defendant objects as being non-existent and therefore unconstitutionally vague, exists and when and, upon whom the burden is placed and at what stage it shifts. The defendant is without

knowledge as to what the State must present in order for him to be judged "in contempt for misconduct as attorney". Defendant specifically requests that this Motion be treated as a Motion for a Bill of Particulars in order to comply with procedural requirements of N.C.G.S. 15A, more specifically N.C.G.S. 15A Section 925, in that no opportunity to ascertain at what stage jeopardy attaches and to what other offenses may be forthcoming in conjunction with the charges upon which he presently faces or the offenses flowing from these charges and his inability to confront them.

For the above reasons the defendant respectfully submits that he is not afforded due process of law and respectfully moves that the prosecution and its underlying charges be dismissed.

This the 8th day of August, 1985.

s/ G. HENRY TEMPLE, JR.
Attorney for Defendant

NORTH CAROLINA IN THE GENERAL COURT
OF JUSTICE
WAKE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)
)
PLAINTIFF,)
) NO.
V.)
) 85-CRS-49342
JEROME PAUL,)
)
DEFENDANT.)

HEARING ON ORDER TO SHOW CAUSE BEFORE
THE HONORABLE DONALD W. STEPHENS

RALEIGH, NORTH CAROLINA
THURSDAY, AUGUST 8, 1985 9:30 A.M.

APPEARANCES

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[Excerpts from argument on
Motion to Dismiss]

(trial transcript, p. 6)

The Court: We are holding a preliminary hearing as set forth in 5(A)-(15). That which constitutes criminal contempt is defined by 5(A)-(11).

Mr. Temple: That would be 5(A)-(11) sub (3), I believe.

The Court: If you look at sub (1), sub (1) says, "...willful behavior committed during the sitting of a court and directly intending to interrupt its proceedings"---

Mr. Temple: (Interposing) Yes, sir.

the Court: ---which, also, would appear to be embraced in the show cause.

Mr. Temple: So that is the standard conduct for which he is held

responsible?

The Court: I will hear your argument on the Motion to Dismiss. Then I will hear what Mr. Blackburn has to say. I am directing your attention, however, to the statute that deals with that conduct which would give rise to a possible contempt citation, which is contained in (trial transcript, p. 7) 5(A)-(11).

Mr. Temple: Basically, my point is that he is entitled to be afforded the opportunity, entitled to be given notice to what he is charged with and then be afforded the opportunity to confront those charges.

Without specific notice of what he is charged with, he might not get an opportunity to confront those charges. I think that 5(A)-(15) establishes that the fact must be established beyond a

reasonable doubt just as 5(A)-(15) sub (F) states the "beyond a reasonable doubt" standard. Just wanted to make certain that that applied in this hearing....

* * * * *

(trial transcript, p. 9)

The Court: I think the show cause order that I issued is sufficient to set forth the facts to which he would be required to set forth the facts that address the question before this court. The burden would be upon the state to establish those facts if the state can. The state must do so beyond a reasonable doubt. There is no burden upon Mr. Paul, the respondent. I will require the state to present evidence as to this conduct, which appears to me to allege conduct

that would be in direct contempt in violation of 5(A)-(11) subsection (1). They must prove that beyond a reasonable doubt.

* * * * *

[Excerpts from testimony of Percy Moorman]

(trial transcript, p.78)

[Percy Moorman]: Yes, sir.

Q Do you recall--I think in January of 1985--going to a rally in Danville, Virginia, on your behalf?

A Yes, sir.

Q What was the purpose of that rally?

Mr. Temple: Objection.

The Court: Overruled.

The Witness: It was really to raise money and just get the people involved in my case, let them know it was racially motivated.

By Mr. Blackburn:

Q Did Jerry Paul go to that rally?

A Yes, sir. He did.

Q Did they both speak at that

rally?

A Yes sir.

Mr. Temple: Objection.

The Court: Overruled.

By Mr. Blackburn:

Q Were you present when they spoke?

A Yes, sir. I was.

Q Can you recall, generally, what Mr. Paul said?

(trial transcript, p. 79)

A He said something about using freedom fighters and that "if we let this young man go down slowly" that a lot of other black athletes would be in a lot of trouble and that all a white girl would have to say is "rape." and they would be convicted or something of that sort.

Q Do you recall anything else Mr. Paul said?

A He said something about the

"D.A. they got on the case is a frame-up D.A." or something. He said his name was Hart or something, Mr. Hart. I said I didn't know him back then.

Q Anything else you can recall?

A He said he was in New York, that he had seen a D.A. or something down at the court---

Mr. Temple: Objection, Your Honor, if he can't say specifically.

Mr. Blackburn: I will withdraw the question.

The Court: Sustained.

By Mr. Blackburn:

Q Did Mr. Paul say whether or not he was under any order not to talk about the---

Mr. Temple: Objection, Your Honor.

The Court: I will sustain that.

Mr. Blackburn: Your Honor, as to the reason, I would like to approach the bench.

The Court: No; you don't have to approach (trial transcript, p. 80) the bench. We don't have a jury here. And I will hear you. The Court is aware of an order issued by Judge Preston involving the case, initially. When I became aware of it, I hadn't reviewed the entire file. The matter before me is not whether or not Attorney Paul may have violated that order. The matter before me is whether he solicited Angelo Barnes to engage in an act during the trial proceedings.

Therefore, I fail to see how the existence of an order is relevant in the question before me.

Mr. Blackburn: You Honor, I would just like to be heard briefly on

that. I think the relevancy of this matter is the allegation of this--I recognize that they are two separate matters and I don't mean to intrude on the second matter. At the same time, it seems to me that I have an obligation if I can show under Rule 404B, North Carolina Rules of Evidence and am entitled to show other acts to show desire, intent, motive.

Mr. Paul is charged in this particular show cause hearing of violating appropriate rules of conduct in a court proceeding by the events which are alleged in the show cause order. What I am soliciting from testimony is whether or not he knowingly did so in the same case in a similar situation which I think would tend to show that it was a pattern of the way Mr. Paul conducted the case. I think it would bear on whether

or not he might have done so (trial transcript, p. 81) in this particular matter in February as to whether or not he did, also, in January. The question, obviously to some degree I suppose, is the question of intent on Mr. Paul's part on what he would do. He certainly appeared to violate an order of some Superior Court Judge at a hearing or rally. I think that would bear on the question of whether or not he would encourage someone to act as they did at the trial.

The Court: I understand the nature of your position, Mr. Temple.

Mr. Temple: Your Honor, as I have stated earlier, I don't know that it is requirement 404B-type conduct. We balance certain interests. I don't think that it is relevant to the extent that it would overcome the prejudice to Mr. Paul

at a later point if it is brought in to testify to another matter where he is under court order for--he is under possible charges. The interest in having him defend himself in that outweighs the relevance to the testimony in this matter. I just don't think it is relevant to the hearing.

The Court: I think it may bear some. I will overrule the objection and permit you to answer the question.

By Mr. Blackburn:

Q Do you want me to repeat the question?

A Yes, sir.

(trial transcript, p. 82)

Q Do you recall Mr. Paul saying anything at this particular rally or in your presence about whether or not he wasn't under some order from a judge of North Carolina not to say anything?

A He said he was on a gag order from a superior court judge or some court in North Carolina.

Q What did he say about that?

A He said that he was going to say it anyway.

Mr. Blackburn: Your Honor, may I have just a moment?

The Court: Yes.

(Pause.)

By Mr. Blackburn:

Q Were these statements by Mr. Paul made before he made the statements at the rally at Danville, Virginia?

A Yes; he made--yes, sir. He did.

Q Mr. Moorman, after you were convicted, you stayed in the Wake County Jail for a period of time?

A Yes, sir.

Q During the time that you were

at the Wake County Jail, was Angelo Barnes also there?

A Yes, sir. He was.

Q Did you see him at the Wake County Jail?

A Yes, sir.

Q Did you ever have any conversations with him?

* * * * *

[Excerpts from testimony of Jerome Paul]

(trial transcript, p. 194)

Mr. Blackburn: Will you tell the Court how you first became aware (trial transcript, p. 195) of Mr. Barnes' intention to stand up and say what he had to say?

A Angelo asked me. I think what he said was would it help if he stood up and said something to Judge Bailey. I do not remember when he brought that subject

up with me. But he did. And at the time I said, "Angelo, if you do that, you are going to get 30 days. It will not help. And I really don't want to see you go to jail." I think I remember talking to him about how it would upset his mother. I told him that he should not upset his mother any further than he had already done.

You have to deal with Angelo by giving him responsibility for his actions. You can't just say "No." You have got to make it his responsibility. Mark is correct about that. The reason Angelo was not visited in jail was because he has to learn to accept responsibility for his actions.

Q Did Angelo come up to see you on Sunday afternoon?

A I don't know. Somebody did. The clothes had to be washed. Tyree was

in charge of that. Whether or not she sent Angelo, or she came herself, I don't know.

Q You visited with Angelo on Sunday afternoon?

A I don't know. If he says that is what happened, then I have no reason to believe that it didn't happen that way. I just don't remember. I mean, six months ago--(trial transcript, p. 196) I have seen Angelo many times. And I am not going to remember a specific incident like that.

Q Do you remember the Monday morning in question?

A I remember vaguely--what I remember is standing around in my underwear waiting for the clothes to come so I could get dressed. That is what I remember. And after that, we just went to court.

Q Do you remember talking to Angelo Monday morning about this incident?

A I think so. I really do. But my impression was that we were outside in the hallway outside of court. I noticed that Angelo was agitated. I said, "Now Angelo, don't do anything to get into any trouble. You are going to get 30 days. Just stay there and behave yourself." And then I went on.

Q Have you ever told Angelo to stand up and disrupt the court proceedings?

A No; that would not be good for Angelo.

Mr. Temple: I have no further questions.

Cross-Examination

3:55 P.M.

(trial transcript, p. 199)

The Witness: What Angelo did was a tactical mistake. It should not have occurred. It was bad for the trial. It was bad for Angelo and created a situation that I would have liked to have avoided.

By Mr. Blackburn:

Q Do you believe it was right or wrong?

A It was wrong in terms of tactics. It was wrong in terms of legalities. For Angelo to, at some points in his life, listen to his conscience is right. That is the only answer you are going to get out of me now. Okay? Or do you want to go over it again?

Q Okay.

A As a theological question, so to speak, Angelo is correct. As a practical matter, he was incorrect.

Q All right.

A The world is more complex than day--night, right--wrong, yes--no.

Q Are you through?

A If you understand, I am through.

Q In 1975, or whenever the Joanne Little trial occurred--is that the year the Joanne Little trial took place?

A Yes; that is the year.

Q In the summertime?

* * * * *

(trial transcript, p. 202)

Q You are also quoted as having said:

> "...You have a black man with an exemplary

> record who has (trial
> transcript, p. 203)
> done nothing wrong,
> being charged with
> rape on evidence that
> in New York City
> would be laughed out
> of court."

A Wouldn't get out of the station house.

Q Did you say that Mr. Paul?

A Yes.

Q Did you believe those things?

A Yes; still do. I mean, it is a story out of a victorian novel.

Q When was the gag order placed on you?

A I have no idea.

Q You knew that one was on you, didn't you?

A Only by heresay. I was not

present. I was not informed of the proceedings. I received no pleadings in the proceedings.

Q But I take it somebody told you not to say anything?

A They didn't say, "Don't say anything." They said that the judge has instituted a gag order.

Q Who was it that told you?

A Do not remember.

Q Was it an attorney?

A Do not remember.

Q You don't know?

A Do not remember.

(trial transcript, p. 204)

Q Did you go to the rally in Danville, Virginia?

A It was not a rally. Golden organized a committee of 100. It was an organized meeting of people who were potential witnesses and were interested

in Percy's case.

It was not open to the public. There was no money raised. And the decision was made specifically not to make it a rally.

Q How many people were there, approximately?

A I don't know.

Q More than a hundred?

A More than a hundred.

Q Where was it held?

A In a church.

Q Who all was present? You were present?

A I was present.

Q Was Golden Frinks present?

A Yes.

Q Was Percy present?

A Yes.

Q Did you speak to the rally?

A It was not a rally.

Q Did you speak to whatever it was?

A Yes; I did. I answered questions.

Q All right. Is that all you did? You just answered questions?
(trial transcript, p. 205)

A I talked about 45 minutes. And I answered questions. It was an organized proceeding. I did not know there was any press there. I had specifically asked whether or not there was any there. I was told "No."

Q Apparently, there was.

A Apparently, a sports writer, who was also a potential witness.

Q I want to read to you, Mr. Paul, statements that are ascribed to you and ask you---

A (interposing) I understand this dispute about whether or not I made

those statements. Golden says he made them, and has told me that. And I remember talking about it. My remembrance is that I talked about it at the house, at the Moorman's house, not at the church. I can't say otherwise.

Q I am still going to ask you some questions.

A Okay.

The Court: Go ahead.

By Mr. Blackburn:

Q You are quoted as having said:

> "...Percy Moorman is facing a charge that has historically been used against black men to intimidate them to keep the white power structure (trial transcript, p. 206) going and to

> maintain the system
> the way it is."

Do you recall making those statements?

A I do not remember specifically. That is a correct assessment. Over a thousand blacks were lynched around that issue. And it became so bad that Paul Robeson and Hank Patterson--he was an attorney in New York that I worked with--went to the United Nations with the problem in the '60's. That is a correct statement. I have that knowledge. It is likely I said that.

Q The article continues:

> "...as I became more
> involved with this
> case, I found out
> what the D.A.'s name
> was; Bill Hart. He
> is the guy they

always used to frame
people in situations
like this."

Did you make those remarks?

A At the meeting? That I cannot say for sure, whether I made those statements at the meeting or at the house. I do not know.

Q Did you make those statements?

A Yes; I did that. Where I said it, I don't know. Golden says I said it at the house. I am going to take his

* * * * *

(trial transcript, p. 208)

A (interposing) Are we having a hearing on this contempt charge? or is it one about Angelo?

Q I believe---

The Court: (interposing) Just a moment. This is not a discussion

between you and he. I have already stated on the record--I mean, you have got a lawyer over here. If he wants to object.

Mr. Temple: Your Honor, I will object to the relevancy of this question.

The Court: The objection is overruled. We are not having a hearing on any gag order. But I will permit the questions. Mr. Paul, if you choose not to answer the questions, you can do so if you want.

The Witness: I understand the plan. The plan is getting me to say things about the gag order. And so I know that you are helping him out. So I really don't want to say anything about this article. The article speaks for itself.

The Court: I take that, Mr. Paul and Mr. Temple, that Mr. Paul does not intend to answer any more questions at this hearing about any alleged statements that he made concerning a gag order. You may proceed in any other areas.

* * * * *

(trial transcript, pg. 237)

PROCEEDINGS

9:30 A.M.

THIS CAUSE CAME ON FOR HEARING BEFORE THE HONORABLE DONALD W. STEPHENS, SUPERIOR COURT JUDGE, AT RALEIGH, NORTH CAROLINA, FRIDAY, AUGUST 9, 1985, AT 9:30 A.M.

FURTHER PROCEEDINGS

9:30 A.M.

The Court: Let the record show that Mr. Paul is present in court. Mr. Temple is present. Mr. Blackburn is present.

Gentlemen, I have reached a decision in the case. In a moment I will pronounce the decision of the Court. I will dictate an order in that regard.

For the record, I have carefully considered the testimony of each witness that has testified. I have carefully considered the demeanor of each witness and the interest of each witness in this case.

The Court was impressed by Mr. Paul's testimony from which one could infer that he believes that in some circumstances, a demonstration, or act of protest, is philosophically appropriate. I considered that along with (trial transcript, pg. 238) all the other evidence in this case.

I have carefully considered the circumstances to which he testified regarding his conduct in the Joanne

Little trial for which Judge Hamilton Hobgood held him in contempt.

I have considered, among other things, Mr. Paul's statements from which the Court could infer that in his opinion, the Percy Moorman case was not the kind of case or circumstance that warranted a public protest or demonstration; that in essence it was not a good tactical decision; it was stupid, served no purpose; and that he did not solicit, encourage or sanction it and discouraged it.

However, in evaluating that statement, the Court has also considered all the other evidence in this record in the hearing before me regarding the conduct of Mr. Paul in the Moorman case that appears unwise, inappropriate and poor tactical decisions including his public statements to members of the media

which could be viewed as protest against prejudice.

After considering all of this evidence, and based upon all of the evidence, the Court is satisfied beyond a reasonable doubt that Attorney Jerome Paul, together with Golden Frinks, solicited, procured and encouraged Angelo Barnes to engage in an act of protest as described in the (trial transcript, p. 239) show cause order.

I, therefore, based upon this evidence found Mr. Paul guilty as charged of criminal contempt.

Please take this order:

This matter came on for hearing before the undersigned judge upon a show cause order dated 24, July, 1985, which was served on Attorney Jerome Paul in open court on that same date directing that he appear before the undersigned

judge on August the 8th, 1985, in the Superior Court of Wake County to answer an accusation that he did, during the trial of State v. Percy Moorman, solicit Angelo Barnes to engage in an intentional act of protest in open court for the purpose of disrupting the trial proceedings.

The conduct as alleged, described more particularly in the show cause order, is in violation of GS5A-11(A)1 in that it alleges willful behavior during the sitting of the Court, directly tending to disrupt and interrupt the court's proceedings.

Alleged conduct of Attorney Paul, if true, would constitute indirect contempt (GS5A-13(B)) by virtue of his solicitation of another person to commit the above described acts of direct contempt.

The Court has conducted a preliminary hearing pursuant to the provisions of GS5A-15. The Court finds that Attorney Paul was personally served with the show cause order (trial transcript, p. 240) and personally appeared before the Court at such preliminary hearing on August 8th, 1985, where he was represented by Attorney Henry Temple of the Wake County Bar. The state was represented at such hearing by Attorney James Blackburn who was appointed by the Court pursuant to the provisions of GS5A-15(G).

The Court heard evidence presented by the state and the defendant. After careful examination of all the evidence, considering and evaluating the demeanor and interest of each witness, and after considering the arguments of counsel, the Court finds and concludes that Attorney

Jerome Paul is guilty of criminal contempt as charged.

The Court specifically finds beyond the reasonable doubt that Attorney Jerome Paul did solicit, encourage and cause Angelo Barnes to stand up in open court during the trial of State v. Percy Moorman on 18 February, 1985, in the Superior Court of Wake County for the purpose of interrupting the trial and protesting the rulings of the presiding judge. Attorney Paul acted intentionally, knowing that this conduct of Angelo Barnes would constitute willful behavior tending to disrupt and interrupt the court proceedings constituting criminal contempt in violation of GS5A-11(1). The Court finds that as a result of the aforesaid solicitation and encouragement by Attorney Paul, (trial transcript, p. 241) Angelo Barnes did in

fact stand up in open court in protest and object to the trial court's rulings; and that this conduct did in fact disrupt and interrupt the trial proceedings. Wherefore, based upon the aforesaid findings of fact, the Court concludes and finds beyond a reasonable doubt that Attorney Jerome Paul is guilty of criminal contempt.

You can stop the order there and I will dictate the rest of it in just a few moments.

All right, Gentlemen, I have so found. I will not hear additional evidence from the state with respect to the appropriate punishment. I will hear what you have to say on punishment, if you have anything to say, Mr. Blackburn. I will hear from Mr. Paul, Mr. Temple, with respect to the appropriate punishment for the charge of criminal

contempt. And I will hear you right now.

Mr. Temple: Your Honor, this matter came to me two days ago. And if you will, now, you can focus on my representation in the practical allegations in the defense of Mr. Paul going to trial.

I really would like time to gather my thoughts and discuss it with Mr. Paul. There are several aspects that I would like to pursue. And I would like several days to do it.

The Court: Mr. Temple, I understand (trial transcript, p. 242) your request. I think every attorney that has ever tried a case has felt that way from time to time.

However, Mr. Paul has known from the date of my show cause order that this matter would be before the Court. He has had an opportunity to retain you at any

time after that. Prepare to go forward.

And the only question that we go forward at this moment on, is what punishment should be imposed for criminal contempt, the maximum of which would be 30 days in jail. The statute authorizes a fine reprimand as other alternatives. I certainly must consider the fact that Mr. Barnes received 30 days in jail for his conduct. And that would obviously be an important consideration by the Court in determining what would be an appropriate punishment for one who solicited and encouraged him to do that.

And, frankly, I think you have had sufficient time over this evening to anticipate either ruling of the Court and be prepared to present any evidence you choose on that question or any comment. So your request for any further delay is denied.

Mr. Temple: I think that in reaching the decision, the Court has had at its disposal more information than I do--I have had--and that you have had an opportunity to perceive in a previous hearing, a second hearing, to gather some of the evidence.

* * * * *

(trial transcript, p. 244)

The Court: Do you choose to say anything, Mr. Blackburn? The Court does not require that you say anything.

Mr. Blackburn: I understand, Judge, I think I will say one thing. . .

I am reminded about what Roger Smith said about him. I read it in the newspaper. I was not present at the closing arguments in the hearing before you a few weeks ago that:

"...For a number of

years in the 1960's and the 1970's, Mr. Paul was on the front (trial transcript, p. 245) line taking heat for a lot of people and a lot of unpopular things. He is to be admired for that."

* * * * *

(trial transcript, p. 246)

The Court: Mr. Paul, do you choose to (trial transcript, p.247) say anything? I give you that right, as you know. In any hearing such as this, the respondent has---

The Respondent: (interposing) I understand that, judge. I don't see any reason to say anything.

The Court: Very well.

Gentlemen, I am impressed with Judge Arnold's statement for the Court in Enright v. Paul in which he said that:

> "...a courtroom is not a public hall for the expression of views, nor is it a political arena or a street corner. It is a place for the trial of cases on the merits in accordance with rules of law and standards of demeanor and conduct for judges and jurors and parties and witnesses and spectators and lawyers, too."

JUDGMENT

10:25 A.M.

Based upon the verdict which I have found, it is the judgment of the Court that Attorney Jerome Paul be confined to the common jail of Wake County for the period of 30 days for criminal contempt.

* * * * *

(trial transcript, p. 249)

The Court: Mr. Blackburn, are you prepared to go forward with respect to [the disciplinary hearing] now?

Mr. Blackburn: Yes, sir. I do not have a lot of testimony. Mr. Edmondson, who is with the state bar, is on vacation this week.

I do have some matters to present to the Court on that, however.

The Court: Mr. Temple, are

you prepared to go forward?

Mr. Temple: I would like to make the same motion that I did before, Your Honor, particularly in light of your condition of appeal in the last sentencing.

Mr. Blackburn: Your Honor, I would say this: I have a number of documents to present. At the same time, the person who is most familiar with those documents is unable to be here. But I can go forward otherwise.

The Court: Very well. I am going to take a recess until 10:30. I will let you talk to Mr. Paul about the matter. Then, at that time, we will move forward.

(The proceeding was recessed at 10:00 A.M. to reconvene at 10:30 A.M., this same day.)

FURTHER PROCEEDINGS

10:45 A.M.

The Court: All right, Gentlemen, I have (trial transcript, p. 250) brought the Court back to order and we are prepared to go forward and to proceed in this hearing which is a disciplinary hearing on the question of whether or not the Court should impose some disciplinary sanction pursuant to the provisions of GS84-28, subsection B, subsection 1, against Jerome Paul for the conviction of a criminal offense showing professional unfitness.

Mr. Temple, I had the impression that you want to say something?

Mr. Temple: Actually, what I wanted to do was in the criminal matter which, of course, we spoke of earlier. I have a motion for appropriate relief. And I don't know if you would rather I

make it later or---

The Court: Yes, sir, now. Go ahead. That would be fine.

Mr. Temple: Judge, as I understand the order was the Mr. Paul was found guilty of contempt and sentenced to an active sentence of 30 days.

The Court: Yes, sir.

Mr. Temple: I asked the Court if the order was completed. And the Court at that time said "Yes." And then we gave notice of appeal. And one of the conditions of the appeal was that Mr. Paul not practice law. As I understand, I am going to be arguing against that in a few minutes...

* * * * *

(trial transcript, p. 261)

The Court: ...So, Mr. Blackburn, I will hear from you first.

And, also,I would like to hear from both counsel on their position of the law as it relates to whether or not this conduct is sufficient as a matter of law to warrant all sanctions that the Court can impose, if the Court finds it appropriate.

(Counsel for the state and counsel for the defendant, and the defendant made closing statements to the Court, including at 11:55 A.M.)

(The proceeding was recessed at 12:00 P.M., to reconvene at 2:00 P.M., this same day.)

FURTHER PROCEEDINGS

2:00 P.M.

The Court: Let the record show that Mr. Paul, Mr. Temple and Mr. Blackburn are present.

Gentlemen, I know that you all know

it is sort of a cardinal rule of judges that you don't explain anything you do. You just do it. That is generally the practice. This, obviously, has been an extremely difficult decision for me to make. And because of the nature of what I have heard, I have a couple of comments to make for the record. Then I will enter a judgment.

It is the feeling of the Court that, obviously, our system of justice is an extremely vulnerable and fragile thing. It can work and be effective only if the citizens of (trial transcript, p. 262) the community have some trust and respect for it. For that reason, what we do in any trial is important. But, also, equally important is how our actions and conduct are perceived.

For that reason statements such as "the system is racially prejudiced

against" someone, unsupported by the evidence; or that a respected prosecutor has been brought in to frame someone unsupported by the evidence; or that a planned courtroom demonstration is, in fact, planned and is carried out, totally manipulates that very fragile system to the extent that the community does not know what to believe.

It is the observation of the court that the community, then, loses trust and loses respect. And just as in a marriage, when you lose trust it is gone. And it does not easily return.

An attorney is an officer of the Court. When he, as an attorney, engages in conduct that intentionally disrupts the proceedings, he contributes to that loss of trust and respect for law and for the Court and for our system of justice. The Court considers that type of

misconduct extremely serious. When that attorney does it repeatedly, the Court considers that outrageous.

One also notes that an attorney who believes that his personal goals or principles sometimes justify violating the rules that govern his professional conduct, travels (trial transcript, p. 263) somewhat in harms way as it relates to his professional license to practice law.

Based upon the evidence that I have heard and the arguments of counsel, therefore, I will enter the following judgment in this matter.

JUDGMENT

2:05 P.M.

This cause came on for hearing before the undersigned judged presiding at August 8th, 1985, session of the

Superior Court of Wake County, a preliminary proceeding for discipline of an attorney, Jerome Paul. Attorney Paul was personally present in open court and represented by Attorney Henry Temple of the Wake County Bar. The State of North Carolina was represented by Attorney James Blackburn. The Court finds the following facts having been satisfied thereof by clear, cogent and convincing proof:

1 That Attorney, Jerome Paul, is an attorney licensed to practice law in the state of North Carolina.

2. That Jerome Paul was convicted by this Court on this date of the criminal offense of criminal contempt and was sentenced to 30 days confinement, a copy of which judgment is attached.

3. That pursuant to the general statutes of North Carolina, Chapter 84,

and pursuant to the inherent powers of the Court, the Court has the authority to impose disciplinary (trial transcript, p. 264) sanctions against Attorney Paul for such criminal conviction showing professional unfitness (GS84-28(B)(1)).

4 Attorney Paul had notice of the Court's intention to conduct this disciplinary proceeding by its show cause order of July 24, 1985, which was personally served upon Attorney Paul, a copy of which is attached.

5 The offense for which Attorney Paul has been convicted directly involved his practice as an attorney and directly reflected upon his fitness to engage in the profession of an attorney and counselor at law.

6 Attorney Paul's conduct is such as to demean and bring into disrepute and disgrace the practice and profession of

an attorney and to bring contempt upon administration of justice.

7 Attorney Paul has been previously held in contempt for similar misconduct in 1975 and has been twice disciplined by the suspension of his license to practice law by the North Carolina State Bar for serious attorney misconduct. However, he still does not appear to appreciate the necessity of complying with the rules and conduct expected of attorneys licensed by the State of North Carolina and willfully refuses to do so.

8 The courtroom is not a public hall for the expression of views, nor a political arena or a street. It is a place for the trial of cases on their merits in accordance with (trial transcript, p. 265) rules of law and standards of demeanor and conduct for

judges, jurors, parties, witnesses, spectators and counsel. Attorney Paul, by his conduct, refuses to accept that basic principle of his profession.

Based upon the foregoing findings of fact, the Court concludes as a matter of law:

1 That Attorney Jerome Paul has been convicted of a criminal offense showing professional unfitness.

2 That Attorney Jerome Paul's conduct is such as to warrant disbarment by this Court.

Now, therefore, it is ordered:

1 That Jerome Paul is herewith disbarred from the practice of law and profession as an attorney in the State of North Carolina.

2 That Jerome Paul shall forthwith transmit his license certificate to the North Carolina State

Bar.

3 That Attorney Jerome Paul shall not practice law in North Carolina unless and until his license may be restored pursuant to the reinstatement procedures of the North Carolina State Bar.

4 That the Clerk of the Superior Court of Wake County shall forthwith certify a copy of this order for the North Carolina State Bar.

That is the judgment of this Court.

Mr. Temple: To that judgment, Mr. Paul gives (trial transcript, p. 266) Notice of Appeal.

The Court: To the judgment, Jerome Paul gives Notice of Appeal in open court. No further notice is required. He is allowed 60 days within which to prepare and serve on the state a proposed record of appeal. The state is allowed 30 days to serve exceptions or

counter-case. No bond is required.

Gentlemen, this matter is ended. Adjourn court.

(The proceeding was adjourned at 2:15 P.M.)

NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA,)
)
PLAINTIFF,) NO.
)
V.) 85-CRS-49342
)
JEROME PAUL,)
)
DEFENDANT.)

JUDGMENT OF CONTEMPT

This matter came on for hearing before the undersigned Judge upon a show cause order dated 24 July 1985 which was served on Attorney Jerome Paul in open court on that same date directing that he appear before the undersigned Judge on August 8, 1985, in the Superior Court of Wake County to answer an accusation that he did, during the trial of STATE V. PERCY MOORMAN, solicit Angelo Barnes to

engage in an intentional act of protest in open court for the purpose of disrupting the trial proceedings.

The conduct as alleged, described more particularly in the show cause order, is in violation of G.S. 5A-11(a)(1) in that it alleges willful behavior during the sitting of a Court directly intending to disrupt and interrupt its proceedings.

The alleged conduct of Attorney Paul, if true, would constitute indirect contempt (G.S. 5A-13(b)) by virtue of his solicitation of another to commit the above described acts of direct contempt.

The Court has conducted a plenary hearing pursuant to the provisions of G.S. 5A-15. The Court finds that Attorney Paul was personally served with the show cause order and personally appeared before the Court at such plenary

hearing on August 8, 1985 where he was represented by Attorney Henry Temple of the Wake County Bar. The State was represented at such hearing by Attorney James Blackburn who was appointed by the Court pursuant to G. S. 5A-15(g).

The Court heard evidence presented by the State and the defendant. After a careful examination of all the evidence, considering and evaluating the demeanor and interest of each witness, and after considering the arguments of counsel, the Court finds and concludes that Attorney Jerome Paul is guilty of criminal contempt as charged.

The Court specifically finds beyond a reasonable doubt that Attorney Jerome Paul did solicit, encourage and cause Angelo Barnes to stand up in open Court during the trial of STATE V. PERCY MOORMAN on 18 February 1985 in the

Superior Court of Wake County for the purpose of interrupting the trial and protesting the rulings of the presiding Judge. Attorney Paul acted intentionally, knowing that this conduct of Angelo Barnes would constitute willful behavior tending to disrupt and interrupt the Court proceedings constituting criminal contempt in violation of G.S. 5A-11(1). The Court finds that, as a result of the aforesaid solicitation and encouragement from Attorney Paul, Angelo Barnes did in fact stand up in open court to protest and object to the trial Court's rulings and that this conduct did in fact disrupt and interrupt the trial proceedings.

WHEREFORE, based upon the foregoing findings of fact the Court finds beyond a reasonable doubt that Attorney Jerome Paul is guilty of criminal contempt.

Based upon the aforesaid guilty verdict, it is the judgment of the Court that Attorney Jerome Paul be confined to the common jail of Wake County for a period of 30 days for such contempt.

IT IS SO ORDERED AND ADJUDGED on this the 9th day of August, 1985.

s/ DONALD W. STEPHENS
Judge Presiding

NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA, PLAINTIFF, V. JEROME PAUL, DEFENDANT.	NO. 85-CRS-49342

JUDGMENT OF DISBARMENT

This cause came on for hearing before the undersigned Judge presiding at an August 8, 1985, session of the Superior Court of Wake County upon proceedings for discipline of an attorney, Jerome Paul. Attorney Paul was personally present in open court and represented by Attorney Henry Temple of the Wake County Bar. The State of North Carolina was represented by Attorney

James Blackburn. The Court finds the following facts having been satisfied thereof by clear, cogent and convincing proof:

1. That Jerome Paul is an attorney licensed to practice law in the State of North Carolina.

2. That Jerome Paul was convicted by this Court on this date of the criminal offense of criminal contempt and was sentenced to 30 days confinement, a copy of which judgment is attached.

3. That pursuant to the General Statutes of North Carolina, Chapter 84 and pursuant to the inherent powers of this Court, the Court has authority to impose disciplinary sanctions against Attorney Paul for such criminal conviction showing professional unfitness. [G.S. 84-28(b)(1)].

4. Attorney Paul had notice of the

Court's intention to conduct this disciplinary proceeding by its show cause order of July 24, 1985, which was personally served upon Attorney Paul, a copy of which is attached.

5. The offense for which Attorney Paul has been convicted directly involved his practice as an attorney and directly reflected upon his fitness to engage in the profession of attorney and counselor at law.

6. Attorney Paul's conduct is such as to demean and bring into disrepute and disgrace the practice and profession of an attorney and to bring contempt upon the administration of justice.

7. Attorney Paul has been previously held in contempt for similar misconduct in 1975 [IN RE PAUL, 28 NC App 610 (1976)] and has twice been disciplined by the suspension of his

license to practice law by the North Carolina State Bar for serious attorney misconduct; however, he still does not appear to appreciate the necessity of complying with the rules and conduct expected of attorneys licensed by the State of North Carolina and willfully refuses to do so.

8. The Courtroom is not a public hall for the expression of views, nor a political arena or a street. It is a place for the trial of cases on their merits in accordance with rules of law and standards of demeanor and conduct for judges, jurors, parties, witnesses, spectators and counsel. (IN RE PAUL, 28 NC App 15 619). Attorney Paul by his conduct refuses to accept that basic principle of his profession.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT CONCLUDES AS A MATTER OF

LAW:

1. That Attorney Jerome Paul has been convicted of a criminal offense, showing professional unfitness. [G.S. 84-28(b)(a)].

2. That Attorney Jerome Paul's conduct is such as to warrant disbarment by this Court.

NOW, THEREFORE, IT IS ORDERED:

1. That Jerome Paul is herewith disbarred from the practice of law and profession as an attorney in the State of North Carolina.

2. That Jerome Paul shall forthwith transmit his license certificate and membership card to the North Carolina State Bar, Post Office Box 2590, 208 Fayetteville Street Mall, Raleigh, NC 27611.

3. That Jerome Paul shall not practice law in North Carolina unless and

until his license may be restored pursuant to the reinstatement procedures of the North Carolina State Bar.

4. That the Clerk of the Superior Court of Wake County shall forthwith certify a copy of this Order to the North Carolina State Bar.

This is the 9th day of August, 1985.

s/ DONALD W. STEPHENS
Superior Court Judge Presiding

[GAG ORDER CONTEMPT CASE]

No. 8610SC230

NORTH CAROLINA COURT OF APPEALS

Filed: 25 November 1986

IN THE MATTER OF:	Wake County
JEROME PAUL, ATTORNEY	No. 85CRS12865

Appeal by defendant from Preston, Judge. Judgment entered 25 November 1985 in Superior Court, Wake County. Heard in the Court of Appeals 24 September 1986.

Attorney General Lacy H. Thornburg, by Assistant Attorney General Norma S. Harrell, for the State.

Max D. Stern, G. Henry Temple, Jr., and Wayne Eads for appellant.

BECTON, Judge.

This case arose out of attorney Jerome Paul's representation of Percy Moorman in a rape prosecution in Wake County, North Carolina. The appeal is from judgments of the Wake County Superior Court finding Mr. Paul in criminal contempt for violating a "gag order" previously issued by the court, sentencing him to thirty days in jail, and ordering him disbarred from the practice of law.

Mr. Paul, the defendant, makes the following arguments on appeal: (1) The evidence and the findings were insufficient to warrant the conclusion that defendant intentionally violated the court order and was therefore guilty of criminal contempt; (2) The gag order was unconstitutional on its face; (3) The evidence was insufficient to warrant the

conclusion that defendant violated any disciplinary rules; (4) The disciplinary rules which defendant was charged with violating are unconstitutionally vague and overbroad on their face and as applied to defendant; (5) The defendant was denied his statutory and constitutional rights to a speedy trial and (6) The evidence is insufficient as a matter of law to sustain a judgment of disbarment.

Believing the evidence and the findings were insufficient to support the conclusions that defendant violated the "gag order" or North Carolina DR 7-102(A)(8), 7-107(B)(5), and 7-107(B)(6), we reverse the judgments finding defendant in criminal contempt and ordering him disbarred from the practice of law. Because we have based our decision on narrower state statutory

grounds, it is not necessary to reach the broader constitutional questions raised on appeal. Further, although the trial court's conclusion that defendant was properly served with a copy of the "gag order" seems unsupported by the evidence, there is some evidence (two sentences in a two-volume transcript) that defendant at least knew of the existence, if not the contents, of the "gag order." Consequently, for purposes of our analysis, we assume that defendant knew of the "gag order." We also assume defendant knew of the conduct expected of a lawyer as set forth in our Disciplinary Rules.

I

On 19 October 1984, Judge Preston entered the following order:

> This cause having come before the Court upon written Motion of the State and the Court having examined the newspaper articles complained of (Exhibits A and B of the State's Motion), this Court finds as follows
>
> 1. The statements of Jerry Paul to the media are prejudicial to the State's case, highly inflammatory, and potentially intimidating to the witnesses for the State.
>
> 2. The statements of Jerry Paul are in direct violation of DR 1-102(A)(1), DR 7-102(A)(8), and DR 7-107(B)(5).
>
> Wherefore, this Court hereby Orders Jerry Paul to cease, desist and refrain from commenting on the facts of these cases, the merits of these cases, the credibility of any witnesses, and any further inflammatory, prejudicial or potentially intimidating statements regarding this case.

On 29 January 1985, defendant attended a meeting in a church in Danville, Virginia, his client's hometown. The meeting was organized for local residents

by several black ministers and representatives of the Southern Christian Leadership Conference to form a committee of support for Percy Moorman. Other plans included fundraising, identifying possible character witnesses for the defendant, arranging for bus transportation to the trial in Raleigh, North Carolina for local supporters, and organizing a major rally to take place in Danville shortly before the trial. The planning meeting was not generally open to the public, and each minister brought members of his congregation to the meeting.

During the meeting, defendant made several statements, mostly in response to questions from some of the more than 200 people attending. Defendant did not know that Mark Moring, a reporter for the Danville Register, was seated in the back

row of the church. The next day, some of defendant's comments appeared in an article written by Mark Moring in the Danville Register. There was no evidence that that article circulated within the trial venire, Wake County, North Carolina. Based on the article and Mr. Moring's testimony, the trial judge found that defendant made the following statements:

> Percy Moorman is facing a charge that has historically been used against black men to intimidate them, to keep the white power structure going and to maintain the system the way it is. As I became more involved with this case, I found out what the D.A.'s name was. Bill Hart. He is the guy they always use to frame people in situations like this. I had to ask, why were they so interested in framing this young man? I found out that North Carolina has never had a black starting quarterback, so they have already, in their minds, convicted Percy.
>
> This particular D.A.'s office is being investigated by the Federal Government for cocaine use. While strolling through New York's Central

> Park one afternoon he saw all these coke dealers and looked up and there was a D.A. from Raleigh. He was as red-faced as he could be.
>
> The question is: Are you going to let them do it? All my life I wanted to be a freedom fighter, the only way we can fight for freedom is to stand up to those in the system. Rather than live on my knees like a slave, I am going to stand up and fight like a man. I am going to stand next to Percy in that courtroom and we are going to be swinging. We are going to come out fighting.

The evidence and the findings were insufficient to warrant the conclusion that defendant intentionally violated the court order and was therefore guilty of criminal contempt. N.C. Gen. Stat. Sec. 5A-11 (1981), which specifies the exclusive grounds for criminal contempt, is dispositive of this case. Subsection (b) of that statute provides:

> No person may be held in contempt under this section on the basis of the content of any broadcast, publication, or other communication, unless it presents a clear and present danger of an

> imminent and serious threat to the administration of criminal justice.

Significantly, the trial judge did not find that defendant's comments presented a clear and present danger or a serious and imminent threat. Defendant's comments were made in another state and were not reported in, nor broadcast by, any North Carolina news media. The statements were made at a church meeting called to organize lawful activities in support of Mr. Moorman's legal defense. Defendant's remarks contained no details about the case; they related no specifics about the evidence or about the witnesses. There is no evidence that the statements were made with any foreseeable effect on trial jurors, or, to use defendant's words, "poison[ed] the trial jury well." Nor is there any evidence that the customary methods for conducting voir dire would not assure the

impartiality of jurors even assuming they knew of defendant's remarks.

Statements directed only to a defendant's supporters that the defendant has been unjustly accused do not create a clear and present danger or a serious and imminent threat to the administration of justice. See Bridges v. California, 314 U.S. 252, 86 L.Ed. 192 (1941) (clear and present danger of substantive evil must be extremely serious to impair freedom of speech). As Mr. Moorman's advocate at a fund-raising meeting, defendant obviously was not an uninterested commentator. Given the nature of the meeting in Danville, Virginia on 29 January 1985, defendant's strong statements, suggesting that his client was framed, seem hardly designed to intimidate or to sway potential jurors one way or the other.

No one questions the American Bar

Association's Model Rule of Professional Conduct, Rule 3.6(c), which provides that a lawyer "may state without elaboration ... the general nature of the claim or defense...." Nor would anyone question the right of an attorney to file, even in the county in which the case is to be tried, a motion to dismiss the prosecution based on prosecutorial misconduct when there is a good faith basis to believe that the attorney's client has been framed. The record on appeal contains what defendant calls his "good faith" basis for his comments.

In sum, the trial court's conclusion that defendant intentionally violated the court order and the trial court's conclusion that the statements were of such a nature that there was a reasonable likelihood of interference with a fair jury proceeding are not supported by the

evidence.

II

Based on the analysis above in Part I, we also conclude that the evidence was insufficient to warrant the conclusion that defendant violated any disciplinary rule.

III

We have reviewed defendant's remaining assignments of error and find them to be without merit.

For the foregoing reasons, the judgments finding defendant in criminal contempt and disbarring him from the practice of law are

Reversed.

Judges WEEB and Eagles concur.

Report according to Rule 30(e).

[TRIAL CONTEMPT CASE]

No. 8610SC95

NORTH CAROLINA COURT OF APPEALS

Filed: 3 March 1987

IN THE MATTER OF:	Wake County
JEROME PAUL, ATTORNEY	No. 85CRS49342

Appeal by respondent from Stephens, Judge. Judgments entered 9 August 1985 in Superior Court, Wake County. Heard in the Court of Appeals 25 August 1986.

On 24 July 1985, respondent Paul was ordered to show cause why he should not be held in contempt and disbarred for his alleged solicitation of disruptive behavior in open court during a criminal trial in which he represented the defendant. At the hearing, the State introduced evidence tending to show the following: During the trial of State v.

Percy Robert Moorman, Angelo Barnes, a friend of respondent Paul, who was seated in the first row behind the defense table, stood up in open court after the trial judge had sustained an objection to a question asked by respondent Paul and stated, "Judge please give this man a chance to represent his client. You acting like a D.A." The trial judge had Barnes removed from the courtroom and found him in contempt. Following his conviction in that trial, Moorman hired George Rogister, Jr., to represent him in a motion for a new trial. Prior to the hearing on the motion, Moorman and his mother, Dorothy Moorman, told Rogister that respondent Paul had planned with Angelo Barnes to interrupt the trial in the manner described above. Moorman testified at the hearing in the present case that on the morning of the incident,

respondent Paul and Barnes discussed a "protest" of the case in the car on the way to the court and that during the discussion respondent Paul told Barnes to "pick an appropriate time to protest." Dorothy Moorman testified that Golden Frinks, a friend of respondent Paul, told her prior to Barnes' outburst in court "what was going to happen."

Respondent Paul denied that he solicited Barnes to disrupt the trial and testified that he had advised Barnes against the plan. Barnes corroborated respondent Paul's testimony and testified that the protest was his idea. Mark McGill testified that he drove respondent Paul to court the day of the incident and Barnes was not in the car with them.

At the close of the evidence, the trial court made the following findings of fact:

> The Court specifically finds beyond a reasonable doubt that Attorney Jerome Paul did solicit, encourage and cause Angelo Barnes to stand up in open court during the trial of STATE v. PERCY MOORMAN on 18 February 1985 in the Superior Court of Wake County for the purpose of interrupting the trial and protesting the rulings of the presiding Judge. Attorney Paul acted intentionally, knowing that this conduct of Angelo Barnes would constitute willful behavior tending to disrupt and interrupt the Court proceedings constituting criminal contempt in violation of G.S. 5A-11(1). The Court finds that, as a result of the aforesaid solicitation and encouragement from Attorney Paul, Angelo Barnes did in fact stand up in open court to protest and object to the trial Court's rulings and that this conduct did in fact disrupt and interrupt the trial proceedings.

Based on these findings of fact, the trial court found respondent Paul guilty of criminal contempt beyond a reasonable doubt and ordered him confined to Wake County jail for a period of thirty days

for such contempt.

Following the entry of judgment in the contempt proceeding, the trial judge conducted a hearing to determine whether respondent Paul should be disbarred for his actions. Following the introduction of documentary evidence and arguments of counsel, the trial court made findings of fact and conclusions of law. The court ordered that respondent Paul be disbarred from the practice of law in the State of North Carolina and that he shall not practice law in this State until and unless his license may be restored pursuant to the reinstatement procedures of the North Carolina State Bar.

From the orders adjudging respondent Paul to be guilty of criminal contempt and disbarring him from the practice of law in North Carolina, respondent Paul appealed.

Attorney General Lacy H. Thornburg, by Assistant Attorney General Christopher P. Brewer and Assistant Attorney General Charles H. Hobgood, for the State.

Max D. Stern, G. Henry Temple, Jr., and Wayne Eads, for respondent, appellant.

HEDRICK, Chief Judge.

Respondent first contends that the trial court erred in denying his motions to dismiss because the evidence was insufficient to sustain a verdict of guilty of criminal contempt. Respondent argues that the only evidence that he committed the offense charged was the testimony of Percy Moorman, his former client, and that his testimony is "inherently unreliable" to support a conviction for contempt arising out of

respondent's conduct in this trial. We disagree.

In a proceeding for contempt pursuant to G.S. 5A-15, the judge is the trier of fact. G.S. 5A-15(d). When a trial judge sits as "both judge and juror" in a non-jury proceeding, it is that judge's duty to weigh and consider all competent evidence, and pass upon the credibility of witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom. In re Whisnant, 71 N.C. Appl. 439, 322 S.E.2d 434 (1984). The general rule in North Carolina is that the testimony of a single witness will support a verdict of guilty; the only exceptions to this rule involve prosecutions for perjury, treason and abduction of a married woman. State v. Vehaun, 34 N.C. App. 700, 239 S.E.2d 705

(1977), disc. rev. denied, 294 N.C. 445, 241 S.E.2d 846 (1978).

Although much of the evidence at the hearing in the present case, tending to show that respondent solicited Barnes to disrupt the Moorman trial, was Moorman's testimony, other witnesses corroborated his testimony. Moorman testified that on the morning of Angelo Barnes' courtroom outburst, respondent and Barnes discussed a "protest" on the "racial aspect of my case or the unfairness" in the car on the way to court. He further testified that respondent asked Barnes, "you know what you are going to do?" and when Barnes replied affirmatively, respondent stated, "Just pick an appropriate time to protest." Moorman also testified that following Barnes' statements to the judge in open court, respondent said to him, "I think they got that." Dorothy Moorman

testified that Golden Frinks, a friend of respondent, had told her prior to the outburst "what was going to happen," and that he approached her after the incident and asked her for "ten dollars to take to the Barnes fellow because he helped us out." Thomas Adams, who was in the Wake County jail while Barnes was serving his sentence for contempt of court, testified that Barnes told him that respondent knew what he was going to do in the courtroom because they had discussed it on the way to court that morning. George Rogister, the attorney Moorman hired to file a motion for a new trial, testified that Dorothy Moorman had told him that Golden Frinks and respondent planned "that whole incident with the man who stood up" and that when he asked Moorman about the incident, he told him about the conversation in the car. This evidence

is clearly sufficient to support the trial judge's finding that respondent solicited Barnes to disrupt the trial, thereby committing willful behavior during the sitting of a court which tended to interrupt its proceeding, in violation of G.S. 5A-11(a).

Respondent next contends that the trial court erred by denying respondent's motion to dismiss and request for a bill of particulars. Defendant alleged in his motion and argues on appeal that the show cause order did not give him notice of the conduct which allegedly supports the charge of contempt. Respondent contends that the State's evidence at the hearing tended to show that he conspired with Golden Frinks to solicit Angelo Barnes to disrupt the trial and that he was found guilty of conspiracy with Frinks, although he was not given notice of this

charge in the show cause order. Respondent's contentions are without merit.

The principles of due process require that before an attorney is finally adjudicated in contempt and sentenced after a trial for conduct during the trial, "he should have reasonable notice of the specific charges and opportunity to be heard in his own behalf." In re Paul, 28 N.C. App. 610, 614, 222 S.E.2d 479, 482, disc. rev. denied and appeal dismissed, 289 N.C. 614, 223 S.E.2d 767 (1976). (Citations omitted.) The show cause order in the present case contained a transcript of Angelo Barnes' statements in open court and stated that according to the sworn testimony of Percy Moorman the following conversation occurred in the car on the way to court the morning of the incident:

> Barnes was advised by Paul that there was a need to protest the unfairness and prejudice of the trial against Attorney Paul and Moorman and that Paul wanted Barnes to stand up during the trial and protest the Court's rulings so that the news media would publicize this protest and focus on the prejudice. Barnes agreed and was advised by Paul that he would probably be put in jail for contempt by Judge Bailey. According to this testimony, Paul instructed Barnes to pick a time when Judge Bailey had sustained objections by Prosecutor Hart to questions asked by Paul of a witness.

The order further alleged that respondent had "solicited Angelo Barnes to engage in an intentional act of protest in open court as described above for the propose of disrupting the trial proceedings and that by doing so Attorney Jerome Paul is himself guilty of contempt of court."

In the order entered 9 August 1985, the trial court found respondent guilty of criminal contempt upon its finding that respondent "did solicit, encourage and cause" Angelo Barnes to disrupt

court, as charged in the show case order. Although the State introduced evidence tending to show that respondent and Golden Frinks conspired to solicit Angelo Barnes to interrupt court, respondent was not found guilty of this conduct. We hold, therefore, that the show cause order was clearly sufficient to give respondent notice of the conduct alleged to be contemptuous.

Respondent next contends that the trial court erred in admitting into evidence testimony that respondent violated a court order by making certain public statements. Respondent argues that this evidence was inadmissible pursuant to G.S. 8C-1, Rule 404, because it was evidence of another wrong or act offered to prove his character and to show that he was more likely to have committed the act charged in the present

case. Respondent further argues that any probative value of the evidence is outweighed by its prejudicial affect and that it should have been excluded pursuant to G.S. 8C-1, Rule 403. We disagree.

G.S. 8C-1, Rule 404(b) provides as follows:

> (b) Other crimes, wrongs, or acts.--Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

This rule is consistent with North Carolina practice prior to its enactment. State v. DeLeonardo, 315 N.E. 762, 340 S.E.2d 350 (1986). Evidence of a defendant's attendance at prior meetings and his conduct at such meetings has been held admissible to show motive and

intent, even though such evidence may disclose the commission of another offense. State v. Grant, 19 N.C. App. 401, 199 S.E.2d 14, cert. denied and appeal dismissed, 284 N.C. 256, 200 S.E.2d 656 (1973).

At the hearing in the present case, Moorman testified that respondent spoke about his case at a rally in Danville, Virginia "to raise money and just get the people involved in my case, let them know it was racially motivated." Moorman further testified that in his speech, respondent said "that 'if we let this young man go down slowly' that a lot of other black athletes would be in a lot of trouble and that all a white girl would have to say is 'rape.'" Moorman also testified that respondent told him that he was under a "gag order," but that "he was going to say it anyway." This

evidence is relevant to show respondent's motive and intent to make the public aware of his belief that the prosecution of Moorman was racially motivated, even if to do so would violate a court order. The trial court, therefore, properly admitted this evidence pursuant to G.S. 8C-1, Rule 404(b). Also respondent has failed to demonstrate that the trial court erred in refusing to exclude this evidence pursuant to G.S. 8C-1, Rule 403. In a trial before a judge without a jury, it is presumed that the judge disregarded any incompetent evidence and did not draw inferences from testimony otherwise competent which would render such testimony incompetent. Bowen v. Bowen, 19 N.C. App. 710, 200 S.E.2d 214 (1973).

By his next assignment of error, respondent contends that the trial court improperly relied upon the evidence

relating to the contents of the statements made in Danville. Respondent argues that the trial court "explicitly" based the conviction of contempt upon the evidence of these statements in violation of G.S. 5A-11(b), which provides, in pertinent part, that no person may be held in criminal contempt of court "on the basis of the content of any broadcast, publication, or other communication...." Respondent also argues that the trial court's reliance on this evidence is error because his statements "constituted lawful protest protected by the First Amendment as there was no evidence of a lawful valid and applicable court order restraining his speech."

At the close of the evidence in the present case, the trial judge explained his decision and stated that he had

considered the evidence concerning the Danville statements for the purpose of weighing the credibility of respondent's assertions that he had not solicited Barnes' outburst because he [respondent] felt that the case did not warrant a public protest or demonstration. The judgment clearly discloses that the trial judge based the finding of contempt upon his findings that respondent "did solicit, encourage and cause" Angelo Barnes to disrupt the Moorman trial. Thus it appears that the trial judge properly considered the evidence of respondent's statements in Danville as relevant only to the issue of motive or intent and did not base his finding of contempt on this evidence in violation of G.S. 5A-11(b) or respondent's constitutional rights. The judgment finding respondent Paul in contempt will

be affirmed.

With reference to the judgment of disbarment, respondent first contends that the trial court erred in entering a judgment of disbarment because "[t]he facts underlying this conviction of criminal contempt are insufficient as a matter of law to sustain a disciplinary order of disbarment." In the judgment of disbarment, the trial court made the following findings of fact:

> 2. That Jerome Paul was convicted by this Court on this date of the offense of criminal contempt and was sentenced to 30 days confinement, a copy of which judgment is attached.
>
> ....
>
> 5. The offense for which Attorney Paul has been convicted directly involved his practice as an attorney and directly reflected upon his fitness to engage in the profession of attorney and counselor at law.
>
> 6. Attorney Paul's conduct is such as to demean and bring into disrepute and disgrace the practice

> and profession of an attorney and to bring contempt upon the administration of justice.
>
> 7. Attorney Paul has been previously held in contempt for similar misconduct in 1975 [IN RE PAUL, 28 NC App 610 (1976)] and has twice been disciplined by the suspension of his license to practice law by the North Carolina State Bar for serious attorney misconduct; however, he still does not appear to appreciate the necessity of complying with the rules and conduct expected of attorneys licensed by the State of North Carolina and willfully refuses to do so.
>
> 8. The Courtroom is not a public hall for the expression of views, nor a political arena or a street. It is a place for the trial of cases on their merits in accordance with rules of law and standards of demeanor and conduct for judges, jurors, parties, witnesses, spectators and counsel. (IN RE PAUL, 28 NC App at 619). Attorney Paul by his conduct refuses to accept that basic principle of his profession.

In his brief, respondent does not challenge the findings of fact upon which the judgment of disbarment was based, but argues that those findings do not support

the order disbarring him. We do not agree.

In North Carolina attorneys may be disciplined by two methods--statutory and judicial. In re Burton, 257 N.C. 534, 126 S.E.2d 581 (1962). The judicial method is not dependent upon statutory authority, but arises because of a court's inherent authority to take disciplinary action against attorneys licensed to practice before it. In re Bonding Co., 16 N.C. App. 272, 192, S.E.2d 331, cert. denied and appeal dismissed, 282 N.C. 426, 192 S.E.2d 837 (1972); G.S. 84-36. Judicial disciplinary action may take the form of an order of disbarment or suspension of the attorney's privilege to practice law. In re Hunoval, 294 N.C. 740, 247 S.E.2d 230 (1977). Unprofessional conduct subject to this power includes

"misconduct, malpractice, or deficiency in character" and "any dereliction of duty except mere negligence or mismanagement." Id. at 744, 247 S.E.2d at 233. (Citations omitted.) This power to discipline or disbar attorneys is essential in order that the court may protect itself from fraud and impropriety and to serve the administration of justice. Swenson v. Thibaut, 39 N.C. App. 77, 250 S.E.2d 279 (1978), disc. rev. denied and appeal dismissed, 296 N.C. 740, 254, S.E.2d 181 (1979). An order of disbarment is not a punishment of the attorney disbarred but is a protection to the public against an unworthy practitioner. State v. Spivey, 213 N.C. 45, 195 S.E. 1 (1938).

We hold that the findings of fact support the conclusions of law and the order disbarring respondent, and affirm

the order from which this appeal was taken. It is true, as respondent contends, that his conduct does not amount to a felony, but it is not true, as respondent contends, that his conduct would not support an order of disbarment. Respondent was convicted of contempt for soliciting someone to disrupt a criminal trial in which he, respondent, represented the defendant. This conduct clearly rises to the level of misconduct or a dereliction of duty other than mere negligence or mismanagement. The order of the trial court disbarring respondent was a proper exercise of its inherent authority to discipline attorneys and was necessary to protect the court and the public from an unworthy practitioner.

Respondent further contends that the judgment of disbarment must be reversed because the trial court improperly relied

upon evidence of respondent's statements in Danville. Respondent again argues that the trial court penalized him "for exercising his First Amendment rights" and that the show cause order did not notify him that he could be disbarred for such conduct. Although the trial judge indicated that he disapproved of respondent's conduct in Danville, he did not make any findings of fact in the judgment of disbarment relating to this conduct. All of the findings of fact relate to the judgment of contempt for respondent's solicitation of Angelo Barnes to disrupt Moorman's trial. As we stated above, these findings support the judgment entered. Respondent was not disbarred for making public statements in Danville, as he contends. The judgment of disbarment is proper and will be affirmed.

Finally, respondent contends that the trial court erred in ordering that respondent not practice law during the pendency of the appeal of his conviction for criminal contempt. G.S. 15A-536 provides that the trial court may release a defendant, pending appeal, and may impose restrictions on the defendant. The terms of the release are within the discretion of the court. State v. Crabtree, 66 N.C. App. 662, 312 S.E.2d 219 (1984). We find no abuse of discretion in the restrictions imposed in the present case.

The judgments appealed from are affirmed.

Affirmed.

Judges ARNOLD and WELLS concur.

No. 167P87 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

IN THE MATTER OF:	)	
	)	From Wake
	)	(8610SC95)
JEROME PAUL, ATTORNEY	)	

****

ORDER

Upon consideration of the petition filed by Jerome Paul in this matter for a writ of certiorari to review the decision of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

> "Denied by order of the Court in conference, this the 2nd day of June 1987.
>
> s/ Whichard, J.
>
> For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 5th day of June 1987.

J. GREGORY WALLACE
Clerk of the Supreme Court